SUPREME COURT OF THE UNITED STATES.

No. 277.

THE MILWAUKEE AND ST. PAUL RAILROAD COMPANY, APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVOR, &c., TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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a UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office, being the record and proceedings in the case of James T. Soutter, survivor, &c., *vs.* The La Crosse and Milwaukee Railroad Co. and others, since the transcript of record transmitted to Supreme Court of the United States October 31, 1864.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this first day of September, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] A SCOTT SLOAN, *Clerk.*

Fees, $269 65.

1 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin—present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the U. S., assigned to said circuit, and the Hon. Andrew G. Miller, district judge—on the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Be it remembered, that heretofore, at a stated term of the circuit court of the United States for the ninth circuit and district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday of September, A. D. 1864—present and presiding, the Hon. Andrew G. Miller, district judge—on the twenty-second day of the term, to wit, on the 8th day of October, A. D. 1864, the following proceedings were had, to wit:

Order modifying order of ref. to H. L. Palmer.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE Railroad Company and others. } In equity.

It is ordered by the court now here, that the order made in this cause on the 28th day of April, A. D. 1364, requiring the receiver to

render account, and referring it to H. L. Palmer, auditor, to report on the same to the present term of this court, be, and the same is hereby, modified as follows :

1. Ordered, That Hans Crocker, receiver, file in the office of the clerk of this court, on or before the 20th day of November
2 next, a detailed account of his receipts and disbursements as receiver from the 1st day of June to the 31st day of October, 1864, inclusive ; that any of the parties to this cause may, within ten days after such account shall be filed, file exceptions thereto ; that such account and the exceptions thereto be referred to the auditor appointed in the said order of the 28th day of April, 1864, to examine and report thereon in like manner as upon the accounts and exceptions referred by said former order ; that the auditor ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by him ; that the auditor ascertain and report what sum should be allowed to the receiver for his services and expenses as receiver, and whether the receiver is subject to any, and what, contingent liabilities growing out of his receivership, and the amount and nature of each, and that said auditor report thereon with all convenient speed and by the first Monday of March, A. D. 1865 ; that the receiver also file with the clerk of this court, on or before the 20th day of March, 1865, an account of his receipts and disbursements as receiver from the first day of October, 1864, to the last day of February, 1865, both inclusive ; that any of the parties to this suit may, within five days after such account shall be filed, file exceptions thereto, and that such last-mentioned accounts and exceptions thereto be referred to H. L. Palmer, auditor appointed as aforesaid, to examine and report thereon by the first day of the next April term of this court.

3 *Receiver's rep. for Sept.*

And afterwards, to wit, on the 31st day of October, A. D. 1864, came the receiver, and filed his report for the month of September, A. D. 1864, in the words and figures following, viz :

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee, }
vs. }
LA CROSSE AND MILW. R. R. CO. *et al.* }

To the judges of the circuit court of the United States of America for the district of Wisconsin :

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of September, 1864.

H. CROCKER, *Rec'r.*

Bal. on hand Aug. 31, 1864..... $65,556 66

Receipts: None.

Disbursements:

J. T. Soutter, surviving trustee	$1,128 15
H. L. Palmer	1,000 00
1st mortgage coupons (gov. tax)	1,047 60
Milw. city do., do.	313 95
1st mortgage coupons paid in Sept	77 98
Milw. city do., do	8,708 88
Cash on hand Sept. 30, 1864	53,280 10
	65,556 66

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of October, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Receiver's rep. for Oct.

And afterwards, to wit, on the 30th day of November, A. D. 1864, came the receiver and filed his report for the month of October, in the words and figures follows, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILW. RAILROAD CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of October, 1854.

H. CROCKER, *Rec'r.*

Bal. cash on hand, as per report Sept. 30, '64 $53,280 10

4 Disbursements:

Sundry acc's, 1862 and 1863, for operating	$273 06
Damages (S. & Cotzhausen)	100 00
Legal expenses, 100, 489 25, 1,000	1,589 25

Freight earnings refunded	$1 42
Right of way, east. div.	19 00
1st mortgage coupons	5,849 00
Mil. city do	919 32
Bal. cash Oct. 31, 1864	44,528 95
	53,280 10

STATE OF WISCONSIN, *Milw. co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed to and sworn before me this 20th day of November, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Receiver's rep. for November.

And afterwards, to wit, on the 30th day of December, A. D. 1864, came the receiver and filed his report for the month of November, 1864, in the words and figures following, viz:

United States circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILW. RAILROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of November, 1864.

H. CROCKER, *Rec'r.*

Bal. cash, as per report Oct. 31, '64	$44,528 95
Receipts Milwaukee and St. Paul Railway Co.	24,000 00
	68,528 95

Disbursements:

First mortgage bond coupons	$33,990 75
Milw. city do	303 21
Bal. cash Nov. 30, '64	34,234 99
	68,528 95

STATE OF WISCONSIN, *Milwaukee co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of November, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of December, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Statement of operation of east. div., Oct. and Nov.

And afterwards, to wit, on the 23d day of January, A. D. 1865, came the receiver and filed monthly accounts of the La Crosse and Milwaukee railroad, eastern division, for the months of October and November, 1864, in the words and figures following, viz:

5 *Statement of the operation of the La Crosse & Milwaukee railroad, eastern division, for the month of October*, 1864.

EARNINGS.

From freight	$18,401 55
passengers	13,379 97
mails, rents, and miscellaneous	986 98
Total earnings	32,768 50

EXPENSES.

Repairs:	
Of road	11,110 39
bridges	
fences	3 70
buildings	466 72
locomotive	1,212 55
cars	1,926 33
tools and machinery	1,977 62
Operating:	
Management and general offices	591 40
Station service	3,194 92
Stationery	884 44
Conductors, baggagemen, and brakemen	1,660 50
Train and station supplies	460 79
Engineers, firemen, and wipers	3,648 50
Oil and waste	1,745 48
Fuel	2,430 00
Damage to property	
Loss and damage of freight and baggage	252 85

Personal injuries	
Legal expenses	
Car service	
Miscellaneous expenses	$110 49
Animals killed	
Telegraph	32 48
Rent	12 50
Furniture	3 61
Other expenses :	
Interest and exchange	
New York office expenses	
Taxes U. S.	801 15
Renewal of track	156 50
New building	578 52
Total expenses	33,261 44

RECAPITULATION.

Gross earnings	32,768 50
Total expenses	33,261 44
Excess expenses	492 94

Auditor's Office, Milwaukee, Nov. 20, 1864.

J. P. WHALING, *Chief Clerk*,
By D. W. KEYES.

6 *Statement of the operation of the La Crosse & Milwaukee railroad, eastern division, for the month of November*, 1864.

EARNINGS.

From freight	$18,791 10
passengers	12,046 86
mails, rents, and miscellaneous	840 37
Total earnings	31,678 33

EXPENSES.

Repairs :	
Of road	7,470 57
bridges	
fences	729 62
buildings	528 47
locomotives	1,271 79
cars	2,352 84
tools and machinery	2,105 19
Operating :	
Management and general offices	657 86
Foreign agency and advertising	173 61
Station service	3,113 03
Stationery	405 12

Conductors, baggagemen, and brakemen	$1,938 89
Trains and station supplies	8 07
Engineers, firemen, and wipers	1,554 48
Oil and waste	847 44
Fuel	1,919 50
Damage to property	
Loss and damage of freight, and baggage	93 19
Personal injuries	
Legal expenses	
Miscellaneous expenses	88 74
Animals killed	247 00
Telegraph	43 57
Other expenses :	
Interest and exchange	
New York office expenses	
Taxes U. S	775 35
Renewal of track	
New buildings	292 91
Total expenses	27,416 17

RECAPITULATION.

Gross earnings	31,678 33
Total expenses	27,416 17
Net earnings	4,262 16

Auditor's Office, Milwaukee, Dec. 20th, 1864.

J. P. WHALING, *Chief Clerk*,
By D. W. KEYES.

Receiver's rep. for Dec.

7 And afterwards, to wit, on the 30th day of January, A. D. 1865, came the receiver and filed his report for the month of December, A. D. 1864, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report, as receiver of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of December, 1864.

H. CROCKE, *Rec.*

Bal. cash on hand, November 30, 1864, as per report	$34,234 99
Receipts: Mil. and St Paul Railway Co.	5,000 00
	39,234 99

Disbursements:	
Personal damages	$400 00
Operating expenses, (old ac't)	61 00
Damages to property, (N. Wood, &c.)	1,614 08
First mortgage bond coupons	611 05
Milw. city do.	50 13
Bal. cash on hand Dec'r 31, '64	36,498 73
	39,234 99

STATE OF WISCONSIN, *Milw. co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of December, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this day of January, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Operation of east. div. for Dec.

And on the same day came the receiver and filed monthly account of the eastern division for the month of December, 1864, in the words and figures following, viz:

8 *Statement of the operation of the La Crosse and Milwaukee railroad, eastern division, for the month of December*, 1864.

EARNINGS.

From freight	$10,010 14
passengers	8,786 59
mails, rents, and miscellaneous	1,113 87
Total earnings	19,910 60

EXPENSES.

Repairs:	
Of road	6,654 64
bridges	62 50
fences	
buildings	754 07
locomotives	1,354 55
cars	1,851 13
tools and machinery	
Operating:	
Management and general offices	810 57
Foreign agency and advertising	
Station service	3,202 58

Stationery	$248 25
Conductors, baggagemen, and brakemen	1,421 70
Train and station supplies	360 02
Engineers, firemen, and wipers	1,753 98
Oil and waste	772 00
Fuel	1,272 00
Damage to property	
Loss and damage of freight and baggage	7 85
Personal injuries	
Legal expenses	
Car service	106 00
Miscellaneous expenses	91 43
Animals killed	
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	115 15
Other expenses:	
Interest and exchange	
New York office expenses	
Taxes, U. S. rev.	474 52
Renewal of track	371 95
New buildings	266 34
Total expenses	23,135 41

RECAPITULATION.

Gross earnings	19,910 60
Total expenses	23,135 41
Excess expenses	3,224 41

Auditor's office, Milwaukee, January 26, 1865.

J. P. WHALING, *Chief Clerk*,
By D. W. KEYES.

9 *Rec'r rep. for Jan'y.*

And afterwards, to wit, on the 28th day of February, A. D. 1865, came the receiver and filed his report for the month of January, A. D. 1865, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE & MILWAUKEE R. R. CO. *et als.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1865.

H. CROCKER, *Rec'r.*

Balance on hand, as per report, Dec. 31, 1864	$36,498	73
Receipts: From Milw. and St. Paul R'way Co.	3,000	00
	39,498	73
Disbursements:		
1st mortgage bond coupons	381	90
Milw. city do. do.	268	76
Balance on hand July 31, 1865	38,848	07
	39,498	73

STATE OF WISCONSIN, *Milwaukee co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of January, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of February, A. D. 1865.

W. L. HINSDALE,
Notary Public Milw. Co., Wis.

Operation of east. div. for Jan'y.

And on the same day the said receiver filed monthly account of operation of eastern division for the said month of January, A. D. 1865, in the words and figures following, viz:

10 *Statement of the operation of La Crosse and Milwaukee R. R. Co., (eastern division,) for the month of January, 1865.*

EARNINGS.

From freight	$9,488	75
passengers	8,110	90
mails, rents, and miscellaneous	809	98
Total earnings	18,409	63

EXPENSES.

Repairs:		
Of road	7,624	06
bridges		
fences		
buildings	631	55
locomotives	1,617	73
cars	1,956	82
tools and machinery	406	98

Operating:	
Management and general offices	$509 45
Foreign agency and advertising	
Station service	2,115 49
Stationery	61 13
Conductors, baggagemen, and brakemen	1,331 13
Train and station supplies	321 81
Engineers, firemen, and wipers	1,261 37
Oil and waste	1,120 21
Fuel	1,908 00
Damage to property	
Loss and damage of freight and baggage	87 32
Personal injuries	
Legal expenses	
Car service	
Miscellaneous expenses	104 84
Animals killed	
Freight earnings refunded	
Passenger earnings refunded	
Mail earnings refunded	
Telegraph	
Other expenses:	
Interest and exchange	
New York office expenses	
Taxes U. S. rev	448 61
Renewal of track	
New buildings	263 47
Total expenses	21,769 97

RECAPITULATION.

Gross earnings	18,409 63
Total expenses	21,769 97
Excess expenses	3,360 34

Auditor's Office, Milwaukee, Jan'y 31, 1865.

11 *Notice to rec'r to take possession of rolling stock.*

And afterwards, to wit, on the 13th day of March, A. D. 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed a notice to the receiver to take possession of rolling stock, &c., with affidavit of service, in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To Hans Crocker, esq., receiver in above entitled cause:

SIR: Please take notice that in the suit by supplemental bill in favor of the Milwaukee and Minnesota Railroad Company against the Milwaukee and St. Paul Railway Company and others, (which bill was filed as a bill in the nature of a supplemental bill to the land grant foreclosure bill, so called, in favor of Bronson, Soutter & Knapp against the La Crosse and Milwaukee Railroad Company and others, in which land grant foreclosure cause you were also receiver,) the Supreme Court of the United States has decided that only forty box cars and the proportion of rolling stock purchased by the receiver as described and as mentioned in the decree of foreclosure and sale in said land grant cause, a copy of which decree is hereto attached, marked Exhibit No. 1, passed to the purchasers at the sale under that decree; and that as between the Milwaukee and St. Paul Railway Company and the Milwaukee and Minnesota Railroad Company the latter company is the owner of all the rolling stock which did not pass under said land grant sale as aforesaid, and that the same belongs to the eastern division of the La Crosse and Milwaukee Railroad Company, of which you are still receiver in this cause.

Therefore the Milwaukee and Minnesota Railroad Company again demands, as it heretofore has demanded of you, that you do immediately take possession of all of said rolling stock so belonging to said eastern division and operate so much thereof as may be necessary upon said division, and keep the balance safely and securely.

The Milwaukee and Minnesota Railroad Company will hold you personally and officially responsible for your neglect to comply with the foregoing demand, as it will for your neglect of duty as receiver in this cause in permitting the said rolling stock to be taken possession of by said Milwaukee and St. Paul Railway Company under the void order of the district court pretended to be made in this cause on the 12th day of June, A. D. 1853, and for your neglect and refusal to retain the same after you were notified that the Supreme Court of the United States had decided that said order of June 12, 1863, was void, for want of jurisdiction in the said district court to make it, and for your neglect and refusal to reclaim the same after the circuit court aforesaid had in this cause and in the Howard cause, in which you were also receiver, vacated the said orders of 15th June, 1863, made in this and also in said Howard cause.

12

March 13, 1865.

MATT. H. CARPENTER,
Sol'r for the Mil. and Minnesota Railroad Company.

(Exhibit No. 1 is decree in western division foreclosure case, a copy of which is given on page 322.)

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

William J. C. Forster, being first duly sworn, on oath says that at the city of Milwaukee, in said district, on the 13th day of March, 1865, he delivered to and left with Hans Crocker, esq., receiver in the above entitled cause, a notice, of which the foregoing is a duplicate, and then and there served a copy duplicate of the same on the Milwaukee and St. Paul Railway Company by delivering the same to and leaving the same with Alonzo Cary, secretary of said last-named company.

WILLIAM J. C. FORSTER.

Subscribed and sworn to before me this 13th day of March, A. D. 1865.

JAMES McFARLEN,
Commissioner Circuit Court U. S., District of Wisconsin.

13 *Rec. rep. for Feb'y.*

And afterwards, to wit, on the 31st day of March, A. D. 1865, came the receiver, and filed his report for the month of February, A. D. 1865, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILW. RAILROAD CO. *et al.*

To the judges of the circuit court of the United States for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1865.

H. CROCKER, *Rec'r.*

Balance on hand January 31, 1865	$38,848 07
Receipts: None.	
Disbursements:	
1st mortgage bond coupons	422 51
Milw. City do	185 21
Bal. on hand Feb'y 28, 1865	38,240 35
	38,848 07

STATE OF WISCONSIN, *Milw. co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of February, 1865, according to his best knowledge, information and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of March, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Operation of east. div. for Feb'y.

And on the same day came the said receiver and filed monthly account of operation of eastern division for the said month of February, 1865, in the words and figures following, viz:

14 *Statement of the operation of the eastern division La Crosse and Milwaukee railroad for the month of February.*

EARNINGS.

From freight	$8,201	88
passengers	8,134	59
mails, rents and miscellaneous	822	39
Total earnings	17,158	86

EXPENSES.

Repairs :		
Of road	5,787	15
bridges		
fences		
buildings	438	26
locomotives	1,598	10
cars	1,578	47
tools and machinery	90	17
Operating :		
Management and general offices	592	86
Foreign agency and advertising		
Station service	2,197	04
Stationery		
Conductors, baggagemen, and brakemen	1,255	00
Train and station supplies	508	82
Engineers, firemen and wipers	1,504	00
Oil and waste	376	25
Fuel	1,630	00
Damage to property		
Loss and damage of freight and baggage		
Personal injuries		

Legal expenses	$239	00
Car service	13	16
Miscellaneous expenses	49	05
Animals killed		
Freight earnings refunded		
Passenger earnings refunded		
Mail earnings refunded		
Telegraph		
Printing and advertising	79	51
Other expenses:		
Interest and exchange		
New York office expenses		
Taxes and insurance		
Renewal of track		
New buildings	39	12
U. S. revenue tax	415	75
Total expenses	18,391	72

RECAPITULATION.

Gross earnings	17,158	86
Total expenses	18,391	72
Net earnings		
Deficit	1,232	86

Auditor's Office, Milwaukee, March 30, 1865.

J. P. WHALING, *Chief Clerk*,
Per PATTERSON.

15 *Mandate of Supreme Court.*

And afterwards, to wit, on the 11th day of April, A. D. 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, and filed the mandate of the Supreme Court of the United States, in the words and figures following, viz:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

Whereas lately, in the circuit court of the United States for the district of Wisconsin, before you, or some of you, in a cause between James T. Soutter, surviving trustee, &c., complainant, and the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Broadhead, Newcomb Cleveland, William Gemmel, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simmonds, DeWitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donal-

D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchel, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quenten, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, the Juneau Bank, the Milwaukee, Watertown, and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette, defendants in chancery, the decree of the said circuit court was in the following words, viz :

"This day this cause came on to be heard upon the bill taken as confessed against the defendants, the La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, Edward H. Broadhead, Joshua Hathaway, D. C. Freeman, E. Bradford Greenleaf, Thomas Turton, John Sercomb, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Edwin Townsend, Charles Quenten, John H. Tesch, Byron Kilbourne, the Juneau Bank, Cicero Comstock, George W. Chapman, and Moses M. Davis, for their having failed to plead, answer or demur thereto, and upon the bill and answers of the defendants, Selah Chamberlain, Sebre Howard, Lawrence G. Graham, Donald D. Scott, A. Fleming, and John S. Rockwell, in the name of the Milwaukee and Minnesota Railroad Company, the Milwaukee, Watertown and Baraboo Valley Railroad Company, Edwin C. Litchfield, and Ephraim Mariner, and the replications thereto, and the pleading and proof, and upon the report of the masters herein filed, and on reading the mandate from the Supreme Court of the United States, and on reading the report of Jerome R. Brigham, special master, showing the amount of interest due to the complainant on the 1st day of March, A. D. 1864, to be the sum of four hundred thousand dollars less the sum of thirty-
16 four thousand, seven hundred and ninety-five one hundredths dollars, received by complainant, and that the said instalments of interest are for forty thousand dollars each, and that the same are due and payable on the first days of March and September in each year, and on the motion of Thomas L. Ogden solicitor for complainant, it is ordered, and adjudged, and decreed that the sum of four hundred and five thousand two hundred and ninety-five one hundredths dollars, ($405,290 95,) interest was due and unpaid upon the bonds described on the bill of complaint in this action on the first day of September, A. D. 1864, and that the same now remains due and unpaid. And it is further ordered, adjudged, and decreed that unless the said sum of four hundred and forty thousand dollars be fully paid at or before the expiration of one year from the date of this decree, that the usual order will be made for the sale of the mortgaged premises described and set forth in the bill of complaint and in the mortgage.

And it is further ordered and adjudged that after the expiration of the said year the complainant shall be at liberty, when further instalments of interest shall be due and remain unpaid, or when the said principal sum shall become due and remain unpaid, to apply for

an order for the sale of the said mortgaged premises as directed by and in accordance with the mandate of the Supreme Court.

And it is further ordered, adjudged, and decreed that all moneys in the hands of the receiver or other persons, applicable to the payment of the interest specified in this decree, be paid on this decree so far as necessary to satisfy the amount now due or which may be due at the time of such payment.

And it is further ordered, adjudged, and decreed that any of the parties to this suit, whose rights are not herein and hereby expressly determined and adjudged upon, shall be at liberty to apply to the court at the foot of this decree, and for such other and further relief as they may be entitled to and consistent with the rules and practice of this court, and as may be agreeable to equity.

And afterwards, on the 29th day of September, 1864, came the parties, by their counsel, and by consent it is ordered by the court that the receiver pay to H. L. Palmer, esq., the auditor in this cause, the sum of one thousand dollars, to be applied on his services rendered and to be rendered as such auditor.

And afterwards, on the same day, came the parties, by their counsel, and on consideration of the petition of the United States Trust Company for payment of arrears of sinking fund, it is ordered by the court that said petition be, and the same is hereby, overruled.

And afterwards, on the same day, to wit, the 29th day of September, 1864, came the same parties, by their counsel, and on consideration of the motion of the Milwaukee and Minnesota Railroad Company, made and filed on the 27th instant, that the receiver pay into court all moneys in his hands in this cause, it is ordered by
17 the court that said motion be, and the same is hereby, overruled.

And afterwards, on the same day, to wit, the 29th day of September, 1864, came the parties, by their counsel, and on consideration of the petition of the defendant, the Milwaukee and Minnesota Railroad Company, to discharge the receiver in this cause, and for other relief filed September 27, 1864, it is ordered by the court that the same be, and is hereby, continued.

And it is further ordered that the said receiver file his answer to said petition by the first day of December next, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the Milwaukee and Minnesota Railroad Company and A. Fleming, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, ascertaining the amount due to complainants, and fixing a time for the payment there-

of, and for a sale on failure of payment, be, and the same is hereby, affirmed.

And it is further ordered, adjudged and decreed, that the order of the court dismissing the application for the discharge of the receiver, and possession of the road and its appurtenances, be, and the same is hereby, reversed with costs, and that the said defendant, the Milwaukee and Minnesota Railroad Company, recover against the said complainant four hundred and thirty-four dollars and seventy-eight cents for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with instructions to ascertain the amount due to complainants within some reasonable time to be fixed by said court, and to make an order that, on the payment of that sum, with the costs of complainants, into court within said time, the receiver shall be discharged, and the railroad from Milwaukee to Portage City, with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of road, be delivered by said receiver to the Milwaukee and Minnesota Railroad Company, but that no such discharge of the receiver or delivery of the road and its appurtenances shall be made until said company shall first enter into bond with sufficient surety to pay to Sebre Howard and Selah Chamberlain all such sums as may come into the hands of said company, which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as liens on said road. 10th March.

You, therefore, are hereby commanded that such execution
18 and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

Cost of defendant :

Clerk	$414 78
Attorney	20 00
	434 78

Taxed by D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Petition that receiver take possession.

And afterwards, to wit, on the 13th day of April, A. D. 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its petition for an order that the receiver take possession, &c. (Which said petition was afterwards withdrawn by leave of the court.)

Answer of the receiver.

And on the same day came Hans Crocker, the receiver, and filed his answer to the petition of the Milwaukee and Minnesota Railroad Company, one of the defendants, in the words and figures following, viz:

19 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE Railroad Company *et als.*

To the judges of the circuit court of the United States for the district of Wisconsin:

The respondent, Hans Crocker, for answer to the petition of the Milwaukee and Minnesota Railroad Company in this cause, respectfully showeth to the court, that at the April term of the district court for said district, an application for a receiver was made in this cause by one of the defendants therein named, and also in the case of Sebra Howard *vs.* The La Crosse Railroad Company *et als.*, by the complainant in said suit; that, as the respondent is informed and believes, said applications in both suits were made through the same counsel, Messrs. Carpenter & Hubbel, and were argued at the same time; that one of the grounds urged was a collusive arrangement (since pronounced by the Supreme Court of the United States proper and just) between the agents of the complainants in this suit, and one Selah Chamberlain, then in possession of said road as lessee or mortgagee of said company; that pending said applications, said complainants (as this respondent is informed and believes, by virtue of the provisions of their mortgage) demanded of Selah Chamberlain, (who claimed under said La Crosse company, as subsequent incumbrance, and therefore was bound by the covenants to surrender contained in the mortgage of the complainants, and running with the estate assigned to said Chamberlain;) that said Chamberlain, on or about the 1st of May, 1860, as such subsequent assignee of a part of the
20 estate of said La Crosse company, surrendered possession of said railroad in compliance with the covenants of said assignor, by which he as assignee was bound; that the fact of such surrender was represented to the said district court, and afterwards, to wit, on the 10th day of June, A. D. 1860, it either overruled said motion in this cause for a receiver, or simply did not grant the same, but in said case of Sebra Howard made an order appointing this respondent receiver, a copy of which is hereunto attached and made part of this answer, (marked A;) that although said order is made subject to the order before made, appointing this respondent receiver of the western division, yet he had not taken possession or acted under said appointment; that said order (as this respondent is informed and believes) was made as a matter of hostility to the complainants in this suit, and upon motion of those opposing the second mortgage and not

in their aid; that this respondent did not examine into the merits of said suit, or the relative rights of the complainants in this suit, then in possession, and of said Sebra Howard, nor did said order set forth the magnitude of the cause or the equity of the parties, but, relying upon said order and the advice and legal opinions of said counsel, he deemed it his right and duty to take possession of the road, and did afterwards by their request, or the request of one of them, on the 11th day of June aforesaid, demand from the agents of said complainants the road and rolling stock, serving upon them a copy of said order, and threatening further proceedings in case of refusal; and said complainants protesting against the validity of said order, did surrender said entire road and rolling stock to the respondent, who gave bond and held the same under said order, and by no other right or authority; that it was evident that the possession taken by him was not intended for the benefit of the complainants or the interests represented in their said foreclosure, from the fact that they were then in possession of the road under their mortgage, and their faithful application of the earnings was secured by their mortgage of $1,000,000, and the interest due thereon, and yet were deprived of possession at the suit of said Howard; that said counsel, in procuring said order and in advising and directing the repondent as receiver to take possession of said road and rolling stock, claimed to be acting as well as counsel for the Milwaukee and Minnesota Railroad Company with the complainants through said Fleming, as for Sebra Howard.

And this respondent further shows, that afterwards, and
21 while he was in a complete possession of said road and rolling stock as receiver, to wit, on the sixth day of July of said year, the complainants moved for an order appointing a receiver, which was granted, and a copy of the same is herewith annexed (marked B;) that, as the respondent is informed and believes, said application was made on the part of the complainants merely for the purpose of enabling them to ask for an account from the receiver, because as it then stood they were not parties to any in which the respondent was appointed; that said order merely gave new powers and imposed additional duties upon the receiver, but did not revoke his former appointment or invalidate the proceeding under it; that he neither gave a bond under said order as receiver, or took possession of any property, but was already in possession of said road and rolling stock as aforesaid, and continued so; that afterwards, under the direction of said judge of the district court, and with the express or tacit assent of all the parties in interest, he filed his monthly accounts in this cause, as well as in that of the said case of Howard; that afterwards, to wit, on October 8th, 1862, he was again appointed receiver by the circuit court for said district, in the case of Nathaniel S. Bouton *vs.* The La Crosse & Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company *et als.*, with all the power given by the former orders, a copy of which appointment is hereto annexed, (marked C.)

And this respondent further shows that he neither did examine or as receiver have a right to examine the records in the several cases

in which he was so appointed, for the purpose of ascertaining the propriety of the appointments, or the relative priority of rights; that his powers and rights and duties were all disclosed on the face of said orders, and that no one of said orders shows the reasons of the appointment or the nature of the cause in which it was made, and this respondent as receiver was bound by them. The only adjudication of said court on said subject coming to the knowledge of the respondent was at the instance of said counsel, Messrs. Carpenter and Hubbel, as aforesaid, turning complainants out of possession as aforesaid, and thereby in effect deciding in favor of the superior right of said Howard; that by the effect of said several orders, as he understands them, he took and still holds, as to said eastern division, possession of the entire road under the order in the Howard case; that by express provision in said order, however, his possession was then sub-
22 servient to and subject to the rights protected by the prior order in the suit for the sale of the western division; that by the order in this case, the complainants' rights were subject to those obtained in the prior cases; they had the right to ask for an account, and, after the exigencies for which a receiver was appointed in said two prior cases are fulfilled, to demand a continuance of the possession of the receiver for their benefit; that the rights of said Bouton are in like manner, on the face of the orders, subsequent to those of the complainants. And this respondent is informed by counsel and believes that no order made in this case, and not made in said Howard case, could affect the possession of a receiver holding possession under an order in said last mentioned case. And the respondent further alleges, upon information and belief, that said Milwaukee and St. Paul Railway Company, being anxious to exclude the respondent from the actual management of said eastern division, did, on or about the 12th day of June, A. D. 1863, apply to said district court in this case, and the circuit court of the United States within and for said districts in said other cases, for orders admitting them into actual possession of said eastern division, and directing the receiver to surrender actual possession to them, but to continue as receiver, &c., which motions were allowed in each of said cases, as will more fully appear by copies of the orders hereunto annexed marked, severally, D, E, and F.

And this respondent alleges that it is utterly untrue, as charged in said petition, that said applications were made by agreement or in collusion with him. On the contrary, it was known to the said company and himself that the necessary result of such orders would be to diminish his compensation as receiver, and place him in a most unpleasant and disagreeable position, where he would have apparent responsibility without power—where, at least in public estimation, he would be liable to censure for any misconduct of said St. Paul Railway Company, without any means whatever of correcting such misconduct. And this respondent denies any and every charge of collusion against him as to any matter or thing contained in said petition, and says that the same are not only untrue, but without reasonable ground of suspicion. That this respondent nevertheless

considers himself as the mere officer of the court, holding property for the interests of other parties under the orders of said court, did decree that he had any right to interfere with such orders or
23 oppose applications, or do aught else except obey, and he did not oppose said applications of the St. Paul Railway Company, but did, in obedience to said order made by the circuit court in said Howard case, and to said other orders, and also to an order as to the western division and its rolling stock, made in said cause for the foreclosure and sale of said division, surrender to said St. Paul Railway Company all of said road and the rolling stock. And this respondent submits, that having no other authority than said several orders, appointing him as receiver as aforesaid, and having no right as receiver to look behind those orders to vary or control their effect, and having taken possession and given bond under the said order in the Howard case and none other, he was bound to obey said last mentioned order in said Howard case, and had no right either to set it at defiance or review it.

And he further shows that said company remained in full possession of said road and rolling stock until the said order in this cause of April 23d, A. D. 1864, requiring them to surrender to the receiver the eastern division and rolling stock belonging thereto; that during said period he watched generally the management of said road, and received from said company monthly statements of accounts, but had no further power to interfere with them; that after said last-mentioned order was given to him, he demanded of said company the possession of said eastern division, and of the rolling stock, in pursuance of said order, but the said company, while willing to surrender the eastern division and a portion of the rolling stock, claimed to own and hold, as belonging to the western division, and as received by them under orders in said cause, the greater part of said rolling stock, and therefore refused to surrender, but retained the same; that this respondent, knowing that such claim was not conceded, but was denied by other parties in interest, did not deem it his duty to pass upon those rights, but considered it the province of the court alone, as he did not assent to said construction of the order by said company, and demand particular cars only, but demanded all included within or covered by said order of the court; that said company, having received possession without the consent and against the interest of this respondent, purely by virtue of the order of the court aforesaid, and he having no power to enforce further surrender or compel obedience to said order of surrender, believe it a question between
24 the court and its officers so appointed, and not one between him and said company, and accepted so much as he could obtain from them; that the rolling stock so surrendered was entirely insufficient to operate the road, and instead of earning anything for the owners of or incumbrancers on said road, by operating it with said rolling stock, he should have failed to pay running expenses and they would have eaten up any amount then on hand; that one of the judges of this court had already left Milwaukee without the intention to return for the term; that the order of said judge had openly announced from the bench, that in the absence of the presiding justice

he would not entertain any motion or make any ruling in regard to said road or the receiver or the rolling stock; that the next term of said court was to be in September following, and until then it became, for the reason aforesaid, impossible to obtain the direction of the court in regard to said rolling stock, or its advice or direction as to the management of the road; that in the mean time it became necessary for the receiver to determine upon the best course to be pursued to save the interest of the road, and avoid the dilemma in which he was placed; that he neither had the legal or physical power to recover said rolling stock; that it was evident that said court, in directing the possession and management of said road to be assumed by himself, had not contemplated an entire absence of rolling stock to operate with, and if said rolling stock did not belong to the western division, then there had been and was no compliance on the part of said company with said order of surrender, and it still could be treated as receiver in as full a manner as if it had entirely refused to obey said order made, and could not take advantage of any arrangement made with it by this respondent; that, on the contrary, if it should be held that the rolling stock belonged to said western division, the arrangement would save the eastern division from great loss, and could be enforced against the company.

And this respondent further shows, that believing it his duty (instead of looking to technicalities to the destruction of his trust) to do the best he could under circumstances not contemplated by the court, when it made the order referred to, he made the best possible arrangement he could with said St. Paul Company, and one which was much better for the eastern division than any attempt to manage that division by itself; that he avoided any act which could be considered as recognizing the surrender by said company as a full compliance with said order, and said arrangement was for no definite time, so that upon the meeting of the court in September then following, the court might adjudicate upon the whole question without any embarrassment from stipulations already made by the receiver; that it was then understood among all the parties that the question of the rolling stock would be investigated before the Hon. H. L. Palmer, auditor appointed by this court, and that he would report so as to obtain the order of this court thereon at the September term as aforesaid; that under a belief that such would be the case, and therefore that a special representation of the facts of the surrender and as to the said arrangement was not necessary, this respondent made no such report, but so soon as it was ascertained that said reference to the said auditor would not be finished by a report at that term, this respondent immediately at said term reported the facts and asked directions from said court, which they then refused to consider, as by reference to said report now on file in said court will more fully and at large appear; that said arrangement with said company was substantially as set forth in said extract from testimony of this respondent set forth in the petition, but said extract is a very small portion of the said testimony of this respondent, and he begs leave to refer the whole thereof

now in possession of said auditor, and make the same a part of this answer.

And this respondent again denies all collusion charged in said petition, and all fraud, and all disposition to favor St. Paul company to the injury of his trust, but, on the contrary, avers that in asking a compliance with the order of surrender, and in making said arrangement, he acted in good faith and for the sole benefit of the eastern division intrusted to him, and made, as he now believes and then believed, the very best arrangement that could be made; that it is true that he made reports for July and August, after said order, in the same manner as he made them while said company were in exclusive possession; and it is also true that he showed no receipts of the earnings from said company, but he alleges that this course became necessary as a matter of safety to himself and the fund; that he had great doubts whether the mere surrender of said eastern division without the rolling stock sufficient to operate it could be considered a surren-
26 der of the prior receivership of said company and relieve it from its duties and liabilities, and he therefore considered it more prudent to make no settlement with it, and give no receipt based upon said arrangements, until this court should pass upon the whole transaction, as he feared such settlement might bind him; that with such view he did not actually demand the money received in said months of July and August, but made his returns to this court (showing, as the fact was as regards this respondent, no actual receipts,) in the same manner as if no change in the management of the road had taken place; that after said refusal of this court to consider said report of this respondent, he had no option but to allow the arrangement to continue.

And this respondent further shows, that very shortly after said arrangement was made, all the facts as to it were by this respondent in his testimony communicated to the parties to the suit, and he is informed by counsel, and believes, that it was for the parties' interest in the suit to make such, and take such steps in the premises to compel a further surrender of stock as they might judge for their interest, and that it was not the right of the receiver to initiate a litigation as to the right of parties which they themselves did not choose to enter into. And this respondent further shows, that from the time he first entered upon the duties of receiver to the present time, he has acted in good faith, using the utmost diligence and his best judgment to protect and render profitable the road and interests intrusted to him, and in the discharge of his duties he has not been moved from the right either by fear, favor, or affection, but has obeyed the court unhesitatingly whenever he had their order for a rule of conduct, and in other cases has followed his own best judgment, with such light as he could obtain from the skill and experience of others; and he now believes that his arrangement has been the best that under the circumstances could be had.

And this respondent further shows to the court, that in making said arrangement, and in other acts charged against him in said petition, he had the advice and assent of all those whom he considered

as actually interested in his management as receiver, and knowing that his appointment was not for his own benefit, he believes that in doubtful questions the advice of parties in interest should avail much; and he is informed by counsel, and believes, that by such advice and assent such parties in interest are stopped from questioning the conduct of the receiver, and that no one except a party in actual interest has the right to intermeddle with his accounts or duties;

27 that he is fully acquainted with said eastern division, with the country through which it runs, and the resources and productions of said country; that he has resided in Wisconsin for the last thirty years, is familiar with its trade and resources, as also the trade on the upper Mississippi; that for the last five years, except while the St. Paul company were in possession, he has controlled and managed said road, and believes that under his control it has produced the largest revenue of which it is capable, with the smallest expense consistent with its preservation and safety, or the amount of business to be done, and from such knowledge and experience he insists that under no circumstances and no management can it be made to pay the mortgage and judgment liens upon it prior to the right of the Milwaukee and Minnesota Railroad Company, and consequently that said company have not now, and can by no possibility ever have an interest in the earnings of the road; that he is informed and believes that at the April term, A. D. 1864, the presiding judge of this court gave an opinion that the by sale of the western division, the two parts of the old La Crosse road became finally separated, and then they constituted independent roads; that at the last session of the Wisconsin legislature an act was passed recognizing the organization of the said St. Paul company and its separate and independent franchises as to the said western division, and by a consequence thereof the said eastern division has ceased to be a part of any grand trunk or great thoroughfare, but it is a short road of ninety-five miles, without connecting roads to aid it, and dependent alone upon local business for that distance; that independently even of its judgment liens, its mortgaged incumbrances must be greater than or equal to its value; (for particular statement of such mortgages and of the judgment liens prior to said Milwaukee and Minnesota company, reference is had to the schedule hereunto attached, marked "G;") that until September, A. D. 1864, the through business on the western division was done over said eastern division, and consequently the first was a great feeder of the last, and until this time their interests were identical; but after the completion of the new line of the said St. Paul road to Milwaukee, in said September, this respondent believes that the earnings of the said eastern division could by no act have been increased beyond what they were, except that should the rolling stock be awarded to it, the earnings would be increased to the extent of the value of its use, after deducting repairs and deterioration; and, so increased, said earnings would be insufficient to pay the interest on said mortgage debts, without regard to said judgment liens. The persons so assenting were Russel Sage and others

28 then and now agents for the complainants, trustees of the sec-

ond mortgage, and for the great majority of the bondholders, also for the assignee of the Howard and Chamberlain judgments and other minor judgments.

H. CROCKER.

JAMES S. BROWN, *of Counsel for Receiver.*

DISTRICT OF WISCONSIN, *ss:*

Before me, this 12th day of April, A. D. 1865, personally came Hans Crocker, and made oath that he had heard read and knew the contents of the foregoing answer by him subscribed, and that the same was true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JAMES McFARLIN,
Commissioner Circuit Court U. S. for the District of Wisconsin.

29 Schedule of mortgages and judgments claimed to be liens on the La Crosse & Milwaukee railroad.

1st mortgage from Mil. to Portage	$950	
Less amount retired by sinking fund	75	
		$875,000
2d mortg.	1,000	
Mortgage to city of Milwaukee	314	
		1,314,000
		2,189,000
Interest in arrear on 2d mortg.	448,000	
Amt. due 1 Nov., '65, on said fund	72,000	
		520,000
		2,709,000

Annual int. to be paid—	
On first mortg.	$76,000
" 2d "	80,000
" city "	21,980
" sinking fund	12,000
	189,980

Judgments referred to in the pleadings in this case:

Sebre Howard, about $15,000, and int. from Nov., 1858; Nathaniel S. Bouton, $7,916, and int. from 5 Ap., 1859; Selah Chamberlain, $629,089, and int. from 2 Oct., 1856; Newcomb Cleveland, about $88,000; the Mercantile Bank, $25,794 54, and int. fro. 12 June, '58.

The other papers attached to, and referred to in the said answer of Hans Crocker are as follows:

Nathaniel S. Bouton *vs.* The La Crosse and Milwaukee Railroad

Company and Milwaukee & Minnesota Railroad Company.—Certified copy of order of 12th June, 1863, modifying the order appointing the receiver; will be found on page 338.

Sebre Howard *vs.* The La Crosse & Milwaukee Railroad Company and Selah Chamberlain.—Certified copy of order of 9th June, 1860, appointing Hans Crocker receiver, &c.; will be found on page 10 of printed case in the suit of Howard *vs.* La Crosse & Mil. R. R. *et al.* in Sup. C't of U. S., No. 243.

Green C. Bronson and James T. Soutter, trustees. *vs.* The La Crosse & Milwaukee Railroad Company, the Milwaukee & Minnesota Railroad Company, *et al.*—Certified copy of order of 6th July, 1860, appointing Hans Crocker receiver; will be found on page of the printed case in Sup. Court of U. S.

Green C. Bronson and James T. Soutter *vs.* The La Crosse & Milwaukee Railroad Company and others.—Certified copy of order of 12th June, 1863, modifying the order appointing the receiver; will be found on page 338.

30 Charles Howard, assignee of Sebre Howard, *vs.* The La Crosse & Milwaukee Railroad Company *et al.*—Certified copy of order of 12th June, 1863, modifying the order appointing the receiver; will be found on page 338.

And afterwards, to wit, on the 14th day of April, A. D. 1865, came the defendant, the Milwaukee & Minnesota Railroad Company, by its counsel, and by leave of the court withdrew its petition for the receiver to take possession of the road, heretofore filed, for the purpose of amending the same.

And the same day came the said defendant, by its counsel, and filed its amended petition, with admission of service indorsed, in the words and figures following, viz:

Amended petition for receiver to take possession.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others.

To the judges of the circuit court of the United States for the district of Wisconsin, in equity:

Your petitioner, the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, respectfully represents, that heretofore, to wit, on the 27th day of September, A. D. 1864, your petitioner presented its petition to your honors in said court, entitled in this cause for the removal of Hans Crocker, receiver herein, and for other or different relief, which petition remains on file and of record in this cause; that the said Hans Crocker has already exhibited and filed in said cause an answer or reply to said petition, veri-

fied on oath by him, and your petitioner respectfully prays your honors that the said petition and the answer of the said Crocker thereto may be here and now heard and determined by this court.

Your petitioner further shows that since the filing of said petition the Supreme Court of the United States has, in a certain cause between your petitioner as complainant and the Milwaukee & St. Paul Railway Company and others, defendant, delivered and pronounced its opinion that, under the said western division land grant mortgage, and the orders and decrees in the suit to foreclose the same, under which the Milwaukee & St. Paul Railway Company has pretended to be, as against your petitioner, the owner of all the rolling stock that was on the La Crosse & Milwaukee railroad at the time of the appointment of the receiver, as mentioned in said petition, the said Milwaukee and St. Paul Railway Company acquired and owns of the said roliing stock on the said road, when the receiver was appointed, as mentioned in said petition, only the said forty box cars, specially mentioned and described by their numbers
31 in said land grant decree, and of the rolling stock purchased by the receiver only such proportion as the net earnings of said western division bears to the whole earnings of the said La Crosse & Milwaukee railroad since the same was taken possession of by the receiver to the date of said land grant decree, and that all the said rolling stock, except that which the said Milwaukee & St. Paul Railway Company has become the owner of, as aforesaid, constitutes, as against the said Milwaukee & St. Paul Railway Company, and all persons claiming by, through, or under the sale, under the said land grant decree, a part of the mortgaged premises in this cause, and of which said Crocker was appointed receiver in this cause, by order of the court therein, in that behalf, as appears from a certified copy of said opinion filed in this court in said cause, with the mandate of said Supreme Court therein; and your petitioner begs leave to refer, in support of this petition, to the record, said opinion, and mandate remaining in this court in said cause.

Your petitioner further shows that since the filing of said petition on the 27th of September, 1864, the said Supreme Court has decided in this cause that your petitioner is the owner of the mortgaged premises in this cause, subject to all legal liens thereon.

Your petitioner further represents that the said mortgage premises in this cause consist of the said eastern division or railroad from Milwaukee to Portage City, together with all the rolling stock on the road when the receiver was appointed, and all the rolling stock purchased by the said receiver, as mentioned in said former petition, except that part of said rolling stock of which the said Milwaukee & St. Paul Railway Company is the owner by purchase under said land grant decree, as hereinbefore stated.

Your petitioner further shows that it is desirous of obtaining possession of all the said mortgage premises in this cause, as the said Supreme Court has in this cause determined that it is entitled.

Your petitioner further states that it appears from said former petition, and the answer thereto by said Crocker, receiver, that in con-

sequence of the wrongful possession and control by the said Milwaukee & St. Paul Railway Company, as in said former petition stated, the mortgage premises in this cause cannot be profitably operated by said receiver.

And your petitioner shows, on information and belief, and advice of counsel, and as advised by the said opinions of said Supreme Court, that the said possession of the said rolling stock by the said Milwaukee & St. Paul Railway Company is wrongful and illegal and a contempt of this court, and a violation of the order made by this court in this cause on the 28th day of April, 1864, vacating the former order made in this cause by the district court on the 12th day of June, 1863, which directed the said Milwaukee & St. Paul Railway Company to
32 return to the receiver in this cause the said road and appurtenances from Milwaukee to Portage, and all property relating to said eastern division, and that the said order of the 12th of June, 1863, under which said last-named company took possession of said eastern division rolling stock and property relating thereto, was void, for the reason that the district court, which pretended to make the same, had no jurisdiction or authority to make said order, and that the said order of the 12th of June, 1863, is the only order ever made in this cause under which said last-named company can claim to have taken possession of the said mortgage premises in this cause, and that the said mortgage premises in this cause, from and after the 1st day of October, 1862, have been in the custody of his court; and the said Hans Crocker has been the receiver of this court, as to said mortgage premises, and that since the day and year last aforesaid the said district court has had no jurisdiction or authority whatever, in any cause whatever, to make any order or decree touching the mortgage premises in this cause, and that the order made in this court, in a certain cause therein pending, in favor of one Howard, as complainant, against the La Crosse & Milwaukee Railroad Company and Selah Chamberlain, as defendants, on the 12th day of June, A. D. 1863, mentioned by said Crocker in his said answer to said former petition, was, by the court afterwards, on the 28th day of April, 1864, in said cause last mentioned, absolutely vacated, as appears by the record of said cause remaining in this court, and to which your petitioner asks leave to refer in support of this petition.

And your petitioner says that since the day and year last aforesaid, when said order was vacated as last aforesaid, the said St. Paul company has had no shadow or pretence of right or authority derived from this court to intermeddle with or retain or operate the mortgage premises in this cause, which mortgage premises were in the hands and possession of a receiver of this court on the said 12th day of June, A. D. 1863, when the said orders were made by the said district court in this cause, and by this court in the cause in favor of the said Howard.

Your petitioner further shows, on information and belief, and on information derived from the said answer of the said receiver, that the possession of the said rolling stock by said Milwaukee and St. Paul Railway Company has been, and is, greatly prejudicial and in-

jurious to the rights of your petitioner, and will continue so to be if such possession is permitted by this court.

Your petitioner is informed, and believes, that the said mortgage premises in this cause, properly and honestly managed, including the rolling stock which pertains thereto, would, before the time fixed by the decree of the court in this cause for this petitioner to pay the amount of interest, costs, and expenses, and thus prevent a sale of the mortgage premises in this cause, earn a large amount of money over and above paying the interest on mortgages prior to that, to foreclose which this suit was commenced, and that so managed, it would have earned in the last six months a large amount of money, which ought to have been accumulated in the receiver's hands in this cause, to wit, more than fifty thousand dollars; but that, as it appears from the reports filed in this cause, the actual result of
33 operating said railroad from Milwaukee to Portage, with such rolling stock as the said Milwaukee and St. Paul Railway Company has, since the order of this court in this cause, and in the said cause of the said Howard, made on the 28th day of April, 1864, permitted to be used by said receiver, has been as follows for the following months for 1864 and 1865:

May, 1864, net earnings		$28,398 41
June, 1864, do		19,159 01
July, 1864, do		10,001 66
August, 1864, deficiency	$5,530 39	
September, 1864, do	2,488 50	
October, 1864, do	499 94	
November, 1864, net earnings		4,262 16
December, 1864, deficiency	3,224 81	
January, 1865, do	3,360 34	
February, 1865, do	1,232 86	
	16,529 84	61,821 24

Your petitioner further shows, that the said Milwaukee and St. Paul Railway Company completed its said competing line of road and put the same in operation about the 1st day of September, A. D. 1864, as stated in the said former petition, filed the 27th day of September, 1864; that from that time to the first of March, 1865, there has been a deficiency every month except one, and the total deficiency or money lost by operation of the road during that time $6,537 29.

And your petitioner is informed, and believes, that the future operation of said mortgage premises by said receiver, if the said Milwaukee and St. Paul Railway Company shall be permitted to retain the farther use and control of the said rolling stock, part of the mortgage premises in this cause, will be equally disastrous, and every month the fund in the receiver's hands applicable to the payment of interest in this cause will be diminished, and that the interest of all parties to this cause imperatively requires that the whole mortgage premises, including the said eastern division and the rolling stock pertaining thereto, should be operated together, or that this court

should make an order directing the receiver to cease operating said eastern division at all; that by such order and direction of this court the otherwise continuing monthly deficiencies would be prevented, and whatever may be at present in the receiver's hands would thus be protected and saved to be applied towards the satisfaction of the amount of interest due in this cause.

Your petitioner further states, on information and belief, that the said Milwaukee and St. Paul Railway Company has in its hands, of the earnings of the mortgage premises in this cause, more than four hundred thousand dollars which it ought now to pay over to the receiver in this cause, or pay into court in this cause; that said company never pretended to give any bond whatever to secure repayment of such funds, except a bond in the sum of one hundred thousand dollars; that said company is entirely insolvent and on the eve of open bankruptcy, and that unless this court shall interfere and regain by its receiver the said rolling stock so wrongfully held by the
34 said Milwaukee and St. Paul Railway Company, the said company will use up or greatly depreciate the value of the said rolling stock, and your petitioner and all the parties in this cause be entirely remediless.

Your petitioner further shows, that the said mortgaged premises and the said line of railway now operated by said St. Paul company from Milwaukee, by way of Watertown to Portage City, are and must ever remain rival and competing lines of railway, and that the longer continuance of the practical control of both by the said Milwaukee and St. Paul Railway Company would be a palpable violation of the rights and interests of your petitioner and all interested as encumbrancers or otherwise in said eastern division, and that the further continuance of nominal receivership by said Hans Crocker, with such practical control of said eastern division by said St. Paul company, will be not only oppressive but absolutely ruinous to all those interested in the mortgage premises in this cause, and can result in benefit to no one connected with this cause except to the receiver to the amount of the salary this court may allow him for a nominal continuance of his office, and such sum as the St. Paul company may pay him for omitting and disregarding his duties as such receiver.

Your petitioner further states that notwithstanding the service upon said Crocker of a copy of the said opinions of the said Supreme Court as shown by the affidavit of William J. C. Forster, hereto attached, the said Crocker has taken no steps or proceedings to regain possession of the said rolling stock, as it was his duty to have done, but that the said Crocker in his said answer attempts to shift the blame of his conduct upon this court.

Your petitioner further shows that Exhibit No. 1, hereto attached, is a copy of an account recently exhibited by the Milwaukee and St. Paul Railway Company before H. L. Palmer, auditor in this cause.

Your petitioner therefore prays:

1. That an order may be made in this cause requiring the said receiver before some day in the present term, to be named in said order, to retake possession of all the said rolling stock, a part of tl

mortgage premises in this cause, and report the fact to this court before some other day in the present term of this court, to be named in said order, or report then and there why he has not done so, and that the said receiver, if he so obtains the same, may be directed to safely keep and operate the same upon said eastern division only and keep the same in his custody and possession and from the use, operation, or control of any other person or persons, corporation or corporations whatever.

2. That the said Milwaukee and St. Paul Railway Company, its officers, agents, and employees, may be ordered and directed to deliver over to said Crocker, receiver as aforesaid, all the rolling stock that was on said road when said receiver was appointed except said forty box cars described by their numbers in said land grant decree and the proper amount of rolling stock constituting a part of the mortgage premises in this cause, according to the land grant decree and the first decree of foreclosure and sale in this cause, before some day in the present term of this court, and report the
35 fact to this court by some other day in this term to be named in said order, or that in default thereof after due service on them of a copy of said order the said officers, agents, and employees may be attached as for a contempt of this court and be dealt with by said court for said contempt.

3. And that your petitioner may have such other and further or different relief in the premises as shall be agreeable to equity and good conscience and the nature of the case may require, and for an order on the Milwaukee and St. Paul Railway Company to pay into this court instantly all funds in its hands which it has received from the operation of said eastern division.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is an agent and director of the Milwaukee and Minnesota Railroad Company, the petitioner above named, and makes this verification in its behalf; that he has heard read and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and that as to those matters he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me this 14th day of April, A. D. 1865.

JAMES McFARLIN,
Com'r of Circuit Court U. S., Dist. of Wis.

Circuit court of the United States for the district of Wisconsin, in equity.

THE MILWAUKEE AND MINNESOTA RAILROAD Company
vs.
THE MILWAUKEE AND ST. PAUL RAILWAY Company and others.

DISTRICT OF WISCONSIN, *ss:*

William J. C. Forster, being first duly sworn, on oath says that at Milwaukee, in said district, on the 10th day of April, A. D. 1865, he delivered to Hans Crocker, esq., a copy of the opinion of the Supreme Court of the United States in this cause, and in the suit of James T. Soutter, survivor, &c., *vs.* The La Crosse and Milwaukee Railroad Company and others, and left the same with him, and then and there exhibited to him the certified copies of said opinions under the seal of said Supreme Court of the United States on file in this court.

WILLIAM J. C. FORSTER.

Subscribed and sworn to before me this 14th day of April, A. D. 1865.

JAMES McFARLIN,
Com. Circuit Court U. S., Dis. of Wis.

Statement of the earnings and expenditures of eastern division (La C. and Mil. R. R.) June 13, '63, *to February* 28, 1865.

Gross earnings	$1,273,113 32
Do. from use of rolling stock on western division	24,749 49
36 Total earnings	1,297,862 81
Expenditures:	
Repairs of track	$187,477 73
bridges	8,567 66
fences	591 89
buildings	14,250 44
locomotives	19,003 15
cars	36,271 07
tools and machinery	15,993 19
Management and general offices	16,861 78
Foreign agencies	9,306 43
Station service	73,171 07
Printing and advertising	7,820 90
Conductors, baggage, and brakemen	44,153 51
Train and station supplies	10,419 95

Engineers, firemen, and wipers	$67,220 36
Oil and waste	25,883 71
Fuel	55,992 74
Loss and damage to freight	2,200 43
Personal injuries	480 88
Car service	4,760 77
Miscellaneous	2,569 02
Telegraph	740 98
Passenger earnings refunded	1,365 92
Freight do. do.	5,649 68
Mail do. do.	96 19
Rents	82 67
U. S. revenue tax	14,886 23
Renewal of track	115,423 45
New buildings	34,554 97
Animals killed	1,377 00
Rent of track	40 00
Furniture	983 31
Fencing	1,392 36
State taxes	30,443 64
Legal expenses	6,629 23
New York office expenses	2,007 05
Right of way	190 00
Purchase of iron rails	23,232 00
Milwaukee and St. Paul railway	141,960 82
Locomotive service	1,732 00
Interest and exchange	83 16
H. Crocker, receiver	764 10
Use of rolling stock	202,311 16
	1,188,942 00
Balance	108,920 81
	1,297,862 81

Endorsed: We admit service of copy of the within notice, petition, and exhibits, April 14, 1865.

JAMES S. BROWN, *Att'y for Rec'r.*
CARY & PRATT,
Sol'rs for Mil. and St. P. Railway Co.
THOMAS L. OGDEN, *Sol'r for Compl't.*

37 And afterwards, to wit, on the 17th day of April, A. D. 1865, came the complainant, by his counsel, and filed his petition for possession of the eastern division of the La Crosse and Milwaukee railroad in the words and figures following, viz :

Compl'nt's petition for possession of eastern division.

Circuit court of the United States.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the judges of the circuit court:

The petition of the complainant, on behalf of the bondholders secured by the mortgage set forth in the pleadings, shows to your honors: that the bill of complaint in this suit was filed on the 9th day of December, 1859, to foreclose a mortgage executed by the defendant, the La Crosse and Milwaukee Railroad Company, to secure to the holders of bonds, amounting in the aggregate to $1,000,000, the payment of semi-annual interest coupons and the payment of the principal sum; that by the terms of the said mortgage the trustees, the original complainants in this suit, were authorized, in case of default for sixty days in the payment of any interest, to take possession of the mortgaged property; that at the time the bill was filed the semi-annual interest due on the first day of September, 1859, had not been paid; that possession of the mortgaged premises had been demanded by the trustees and refused; that before filing the said bill the mortgaged property was in possession of the defendant, Selah Chamberlain, under a lease from said railroad company, dated September 27, 1857; that said Chamberlain claimed to have a lien on the property subsequent to the said mortgage, and that possession under his said lease was necessary to his security; that the said trustees as admitted prior incumbrancers could not question the validity of that lien; that thereupon said Chamberlain agreed that the said trustees should have supervision over the entire property, and have the gross revenues, and the said trustees agreed, so long as they received the said gross receipts, and the possession of the said Chamberlain was not threatened from other quarters, to make no application to the court for a change of possession; that if said arrangement had not been made, the trustees would have applied to the court for an order putting them in possession, or appointing a receiver; that one Sebre Howard, one of the defendants to this suit, recovered a judgment in the district court against the said railroad company for $16,379 91, docketed on the 28th day of November, 1859; that on the 5th day of January, 1860, a creditor's bill was filed on his behalf against the said railroad company and the said Selah Chamberlain, alleging that the possession of the said property by the said Chamberlain was fraudulent as against the creditors of the said railroad company, and praying the appointment of a receiver; (to that suit the trustees were not parties;) that on or about the 18th day of May, 1860, the said trustees, fearing that
38 the possession of the said Chamberlain of the mortgaged property might be taken from him, demanded of him the possession thereof, and therefore on that day they received of the said

Chamberlain and took full, complete, and notorious possession of the mortgaged property; that the said trustees thereupon became seized of a legal vested interest in the said property as mortgagees in possession, an interest to be defeated only by the payment to them of the amount due on their mortgage by some subsequent incumbrancer, or by the owner of the equity of redemption; that on or about the 9th day of June, 1860, the said trustees being in possession as aforesaid, the said district court made an order in the said suit of the said Sebre Howard appointing the said Hans Crocker receiver, and directing him to take possession of the mortgaged property; that at that time, and at the time of filing the said creditor's bill, this suit was pending in the said court, and the said Sebre Howard was a party defendant thereto, and that the said trustees were not parties to the suit which ousted them from the possession of the property; that on the application to the said court for the appointment of a receiver, the said trustees could not be heard, but that at the time the said order was made they protested, by their counsel, that their possession under a superior lien for a million, should not be disturbed for a subsequent lien of less than twenty thousand dollars, and in a proceeding to which they were not parties. And your petitioner avers that neither the said trustees nor their agents, nor attorneys, ever voluntarily assented to the transfer of the said property from themselves to the receiver.

And your petitioner further states that prior to that time the said Hans Crocker had been appointed receiver on the western division of the said road, and that the rolling stock was used for the whole line, and the road was an entirety; that there was a practical difficulty in giving distinct possession to each division; that the public policy appeared to demand that the two divisions should be used together as one entire line, and that no injury was to be apprehended to the interests of the bondholders when the property was in the custody of the court; that your petitioner believes that considerations of this nature had great influence with the court in its action, depriving the said trustees of their possession of the property, but no such consideration now exists to prevent its restoration; that on or about the 6th day of July, 1860, the said receiver having been then for some time in the full and entire possession of the mortgaged property, the same receiver was appointed in this suit on the motion of the trustees; that such motion was made not as a voluntary acquiescence in his possession of the property, but as an imposed necessity, that the trustees might have access to the accounts and some control over the receipts that would come into the receiver's hands; that the said trustees were in the receipt of the entire revenues of the mortgaged property from the first
35 day of December, 1859, to the 9th day of June, 1860, and that after deducting all the expenses attending the running the road and paying prior incumbrances, there remained in their hands the net sum of $34,739 05, a sum nearly sufficient to pay the interest on the mortgaged debt as it accrued; that since the said 9th day of June, 1860, to the present time, the period during

which the receiver has been in possession, the bondholders have received nothing whatever to apply upon the accrued interest; each six months from that time has added $40,000 to the interest due; from $40,000 due when the suit was instituted, the amount has now grown to $480,000; that until the decision of the Supreme Court on the application of the Milwaukee and Minnesota Railroad Company for the possession of the property, your petitioner had no reason to suppose that he could make a successful application for a restoration of the property to his possession; that your petitioner and the bondholders are only desirous to have the interest paid, but that your petitioner believes that there is no other hope of any payment from the Milwaukee and Minnesota Railroad Company than that after a protracted litigation they will succeed in convicting an officer of this court of a misappropriation of the funds, and after a further interval they will succeed in securing them; that since the sale of the western division and the isolation of the eastern division, there is no longer any object in withholding the possession of the property from those entitled to it, and that your petitioner and the bondholders he represents believe that in their hands the property would be more productive, and all parties interested would be benefited by their possession. Your petitioner therefore prays that the receiver may be discharged, and the possession of the mortgaged property be restored to your petitioners, with such directions for the surrender thereof upon the payment of the amount due upon the mortgage and costs to your petitioner, or upon the sale of the mortgaged premises, as the court may see fit to make.

THOMAS L. OGDEN, *Sol'r for Compl'nt.*
E. G. RYAN, *of Counsel.*

Indorsed: We hereby admit service of copy of this petition and notice.

Dated, April 15th, 1865.

JAMES S. BROWN, *Att'y for*——.
MATT. H. CARPENTER,
Per D., *Att'y for the Milwaukee and Minnesota Railroad Company.*
N. J. EMMONS, *for S. Chamberlain.*
CARY & PRATT,
Sol'rs for M. & St. Paul R. W. & Co.
CARY & PRATT,
of Counsel for Howard.

Also indorsed:

To above defendants: Take notice that the above petition will be presented to the court on Monday, the 17th inst., and that the relief prayed for will be asked at that time, or as soon thereafter as counsel can be heard.

Apr. 15, 1865.

THOMAS L. OGDEN,
Sol'r for Compl'nts.

Order for costs vs. Compl'nt.

And on the same day came the parties by their counsel, and on reading and filing the mandate of the Supreme Court in this
40 cause, and on motion of the Milwaukee and Minnesota Railroad Company, it is ordered by the court, that the said Milwaukee and Minnesota Railroad Company do have and recover against the said James T. Soutter, survivor, &c., the sum of four hundred and forty-four dollars and seventy-eight cents, costs, adjudged to said company against him by the Supreme Court of the United States in this cause, and if not paid in ten days, that it have execution therefor.

Order modifying order of reference to Palmer.

And also on the same day came the parties by their counsel, and it is ordered by the court that the order in this cause heretofore made, referring certain matters to H. L. Palmer, esq., be so modified that the said Palmer make report thereto, on or before the first day of June next, that any of the parties interested may except to said reports, or either of them, within fifteen days thereafter, and said report and exceptions shall stand for hearing at the first sitting day of this court thereafter, or as soon thereafter as counsel can be heard, and that the testimony before said Palmer shall be closed by the tenth day of May next.

41 *Mil. & Min. exceptions to ac. of receiver.*

And afterwards, to wit, on the 22d day of April, A. D. 1865, came the defendant, the Milwaukee & Minnesota Railroad Company, by its counsel, and filed exceptions to the account of the receiver in the words and figures following, viz:

Circuit court United States, district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

The Milwaukee and Minnesota Railroad Company takes special exceptions to the following items of account in the account rendered by the receiver and marked by the auditor "Continuation of Exhibit E," viz:

1.	Repairs tools mach	$9,015 16
2.	New buildings	7,057 13
3.	Mil. & St. Paul Co	109,950 82
4.	Use of rolling stock	36,118 86

This objection is made upon the understanding that the payment of the sums mentioned have been in fact made by the receiver. Exception is taken to the propriety of such payment and to their lien.

MATT. H. CARPENTER,
Solicitor for Def'ts.

42 *Rep. of rec'r for March.*

And afterwards, to wit, on the 29th day of April, A. D. 1865, came the receiver and filed his report for the month of March, A. D. 1865, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee, }
vs. }
THE LA CROSSE & MILW. RAILROAD CO. *et al.* }

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1865.

H. CROCKER, *Rec'r.*

Balance on hand as reported Feb'y 2, 1865	$38,240 35
Receipts from Milw. & St. Paul Railway Co	8,500 00
	46,740 00

Disbursements:

1st mortgage bond coupons	$152 67
Milw. city bond coupons	8,752 46
Bal. on hand March 31, 1865	37,835 22
	46,740 35

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of April, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milw. Co., Wisconsin.

Statement of earnings for March.

And on the same day came the said receiver and filed a statement of the earnings of the eastern division for the month of March, 1865, in the words and figures following, viz:

43 *Statement of the operation of the La Crosse & Milwaukee railroad, eastern division, for the month of March,* 1865.

EARNINGS.

From freight	$7,652 32
passengers	11,135 89
mails, rents, and miscellaneous	1,111 09
Total earnings	19,899 30

EXPENSES.

Repairs:	
Of road	$5,073 24
bridges	.....
fences	.....
buildings	207 13
locomotives	1,441 26
cars	1,802 35
tools and machinery	171 85
Operating:	
Management and general offices	589 21
Foreign agency and advertising	.....
Station service	1,843 53
Stationery and printing	256 08
Conductors, baggagemen, and brakemen	1,079 34
Train and station supplies	428 29
Engineers, firemen, and wipers	1,272 50
Oil and waste	396 48
Fuel	1,924 00
Damage to property	.....
Loss and damage of freight and baggage	.....
Personal injuries	.....
Legal expenses	.....
Car service	18 28
Miscellaneous expenses	158 00
Animals killed	.....
Freight earnings refunded	.....
Passenger earnings refunded	.....
Mail earnings refunded	.....
Telegraph	20 49
Other expenses:	
Interest and exchange	.....
New York office expenses	.....
Taxes, U. S. revenue	479 60
Renewal of track	.....
New buildings	.....
Total expenses	17 161 83

RECAPITULATION.

Gross earnings	$19,899 30
Total expenses	17,161 83
Net earnings	2,737 47

Auditor's Office, Milwaukee, April 25, 1865.

44 *Receiver's rep't for April.*

And afterwards, to wit, on the 31st day of May, A. D. 1865, came the receiver and filed his report for the month of April, 1865, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of April, 1865.

H. CROCKER, *Receiver.*

Balance on hand March 31, 1865	$37,835 22
Receipts: Milw. & St. Paul Railway Co	1,500 00
	39,335 22

Disbursements:

First mortgage coupons	$38 10
Milw. city coupons	366 67
Bal. on hand April 30, 1865	38,930 45
	39,335 22

STATE OF WISCONSIN, *Milw. county, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of May, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Statement of earnings for April.

And on the same day came the said receiver and filed a statement of the earnings of the eastern division for the month of April, in the words and figures following, viz:

45 *Statement of the operation of the Milwaukee and St. Paul Railway and its divisions for the month of April*, 1865.

EARNINGS.

From freight	$5,277 64
passengers	9,192 55
mails, rents, and miscellaneous	784 94
Total earnings	15,255 13

EXPENSES.

Repairs:	
Of road	$6,586 14
bridges	70 95
fences	25 00
buildings	330 83
locomotives	821 02
cars	997 61
tools and machinery	108 68
Operating:	
Management and general offices	516 80
Foreign agency and advertising	.....
Station service	1,875 33
Stationery	.....
Conductors, baggagemen, and brakemen	1,146 57
Train and station supplies	342 00
Engineers, firemen, and wipers	1,069 00
Oil and waste	439 49
Fuel	1,620 00
Damage to property	.....
Loss and damage of freight and baggage	52 12
Personal injuries	.....
Legal expenses	.....
Car service	22 76
Miscellaneous expenses	52 54
Animals killed	.....
Freight earnings refunded	.....
Passenger earnings refunded	.....
Mail earnings refunded	.....
Telegraph	7 20
Printing and advertising	43 05

Other expenses :	
Interest and exchange	.....
New York office expenses	.....
Taxes, U. S. rev.	$369 55
Renewal of track	.....
New buildings	.....
Total expenses	16,496 64

RECAPITULATION.

Gross earnings	$15,255 13
Total expenses	16,496 64
Excess expenses	1,241 51

Auditor's office, Milwaukee, May 18, 1865.

46 *Report of auditor.*

And afterwards, to wit, on the 28th day of June, A. D. 1865, came H. L. Palmer, esq., the auditor, and filed his reports with the testimony and exhibits, which said report and accompanying exhibits and testimony are in the words and figures following, viz :

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and others.

To the honorable the circuit court of the United States for the district of Wisconsin :

In pursuance of an order of reference made in this cause on the twentieth day of September, A. D. 1864, I, Henry L. Palmer, named in said order, do respectfully report that I have been attended by the counsel for the respective parties, and have taken proofs in regard to the matters referred to me by said order, in addition to the proofs on file in and the records of this cause, which proofs are herewith returned and consist of depositions, and I have also had presented to me the several papers and documents herewith returned and marked exhibits No. 1 to 10, both inclusive.

And I have ascertained and report that the following amounts are payable to the trustees under the mortgages for their expenses, including their reasonable counsel fees, to wit :

For Thomas L. Ogden, for services as solicitor for the complainants	$5,000 00	
Less amount heretofore paid to him	2,500 00	
		2,500 00

For James S. Brown, for services as counsel in the Supreme Court	$5,000 00	
Other services since	500 00	
Services in this court after the argument at Washington, and coming from Washington to Milwaukee and returning	1,500 00	
	7,000 00	
Less amount heretofore paid	3,500 00	
		3,500 00
For David E. Wheeler, for services as local counsel for trustee in New York	5,000 00	
Less amount paid heretofore	1,000 00	
		2,000 00
For J. M. Carlisle, for services as counsel for compl't in Supreme Court	5,000 00	
Less amount heretofore paid	3,000 00	
		4,000 00
For Thomas Ewing, for services as counsel for trustee in Sup. Court	5,000 00	
Less amount heretofore paid	1,000 00	
		4,000 00
N. J. Emmons, for services as counsel for complainants in Supreme Court		2,500 00
For P. Dow, for services and expenses to Washington	$250 00	
Am't paid Anderson, legal expenses	200 00	
		450 00
Dow & Palmer, for disbursements made by them on behalf of the trustees, as follows:		
47 For travelling expenses, clerks' fees, &c	$1,383 03	
Paid F. Randall, counsel	1,000 00	
" Thos. Ewing, do	1,000 00	
" J. M. Carlisle, do	1,000 00	
" D. E. Wheeler, do	3,000 00	
" copy record, do	380 00	
" steamer Keokuk, do	573 84	
		8,336 77
Total		27,286 77

Making in the aggregate twenty-seven thousand two hundred and eighty-six dollars and seventy-seven cents.

I further report that the account filed and referred to me by said order contains a claim for fifteen hundred dollars for the services of James T. Soutter, complainant; that the testimony before me shows that Mr. Soutter, as trustee, rendered some service in the execution of his trust, and that such services are reasonably worth fifteen hun-

dred dollars. I have, however, disallowed this charge, for the reason that the order of reference directs me to report the amount payable to the trustees under the mortgage for their expenses, and does not direct me to ascertain the amount to which the trustees are entitled for their as such.

I further report that the account referred to me in said order contains a charge for services of Prentiss Dow as attorney for the trustees, amounting to $17,500. This charge is for three and a half years' services, from the 1st November, 1859, to the 1st of May, 1863, at $5,000 per year. The testimony before me shows that Prentiss Dow was attorney in fact for the trustee, and was employed as such most or all the time between the dates last mentioned; that five thousand dollars per annum is not an unreasonable compensation for such services, and that bondholders to the amount of $600,000 had been consulted and had assented to his compensation at the rate of $5,000 per year. So much of this salary as accrued between the 1st of November, 1859, and the 1st of June, 1861, was embraced in the subject of a former reference in this cause, and was disallowed by the masters in their report. Its rejection by the masters formed the subject of an exception, was overruled, and the master's report relating thereto sustained by the court. As the principle stated by this adjudication applies to the entire charge, I have disallowed and rejected this charge.

I further report that the evidence before me shows that F. A. Palmer also acted as attorney in fact for the trustee, and that he rendered some slight service in and about the trust, including one trip to Milwaukee. For this the account referred to me contains a charge of $5,000. The testimony before me tends to show that $500 would be a reasonable compensation for this service. It also appears that he was himself a bondholder under the mortgage in this case and a trustee on another mortgage on the same road. Not being
48 satisfied that this service was necessary or proper, or sufficient in extent to justify compensation, I disallow the charge of $5,000 therefor contained in said account.

All which is respectfully submitted.

Milwaukee, June 20, 1865. H. L. PALMER.

49 For the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above entitled cause of the 20th of September, A. D. 1864.

Present—Saturday, Sept. 24—H. L. Palmer, special commissioner; Thomas L. Ogden, of counsel for complainants; Matt. H. Carpenter, of counsel for the Milwaukee and Minnesota Railroad Company and A. Fleming; John W. Cary, of counsel for the Milwaukee and St. Paul Railway Company.

Adjourned to Monday, Sept. 26, at 9 a. m.

MONDAY, *Sept.* 26, 1864.

Parties present as before.

Adjourned to Monday, Sept. 26, at 2 p. m.

MONDAY, *Sept.* 26, 1864—2 p. m.

Parties present as before.

Examination of Russell Sage, as a witness produced, sworn, and examined in behalf of James T. Soutter, trustee.

Russell Sage, being first duly sworn and examined, testified as follows:

Ques. Do you know of James T. Soutter, the complainant, and do you know of any personal attention he has given to this suit or to the interest of the bondholders licensed by this trust; and if so, what, when, and where?

Ans. I know Mr. Soutter, and have had conversations with him in relation to this mortgage in the city of New York, and also in this city. I cannot state only what he told me about his personal attention. I know he came here to the city of Milwaukee in relation to the foreclosure of the mortgage and his duties as trustee. It was after the suit was commenced. I also had conversations with him as a bondholder, in New York, in relation to the foreclosure of the mortgage; and I have also, with other bondholders, met him in New York on the same subject.

Ques. How much of this trust do you hold or represent?

Ans. I believe I hold and represent in the neighborhood of $800,000 at par; I can't state the exact amount.

Ques. Are you a trustee yourself in railroad mortgages, and are you familiar with the duties of trustees in railroad mortgages, and with the amount of compensation allowed them in the foreclosure of mortgages?

Ans. I am a trustee in railroad mortgages. I have had some experience in the duties of trustees in the foreclosure of railroad mortgages and the compensation paid to trustees for such services.

Ques. What sum, in your judgment, would be a reasonable compensation to Mr. Soutter for his services as a trustee and attending to the interests of the bondholders during the progress of this suit?

Ans. I think $1,500 would not be a high compensation.

Ques. Are you acquainted with David E. Wheeler, esq.? Is he an attorney and counsellor at law; and do you know of his rendering any services to Mr. Soutter in this suit?

Ans. I do know David E. Wheeler; he is an attorney and counsellor at law, and I know of his rendering services for Mr. Soutter for the past five years in the prosecution of this suit and in matters pertaining to it, and have met him, I presume, more than a hundred times, in consultation with bondholders and a committee of bondholders on the subject of this foreclosure. He also went to Washington last winter and was there during the arguments on the appeals in this case, and advised with Mr. Soutter's attorney in fact, Mr. P. Dow.

Ques. Are you familiar with lawyers' charges for services similar to those rendered by Mr. Wheeler in this case, and with the compensation paid therefor?

Ans. I have had experience with lawyers who have ren-
51 dered similar services as those rendered by Mr. Wheeler, and the compensation paid them therefor.

Ques. What do you think would be a reasonable compensation for the services rendered by Mr. Wheeler?

(Objected to that the witness has not shown that he is a proper judge, particular payments being no criterion. Objection sustained and question excluded, and complainant excepted.)

Ques. Have you acted and are you now acting as the attorney in fact for Mr. Soutter in the prosecution in this suit?

Ans. Yes.

Ques. As such did you employ Mr. Emmons to aid in the prosecution in this suit, at Washington, on the appeal?

(Objected to on the ground that the trustee could not appoint an attorney in fact to act for him. Overruled and exception.)

Ans. I did not.

Ques. Are you acquainted with F. A. Palmer, one of the former attorneys in fact of Mr. Soutter in this suit, and what services did he render for the complainant, and how was he appointed?

Ans. I am acquainted with F. A. Palmer. He came once to Milwaukee on business pertaining to the foreclosure of this mortgage, and I have met him with the bondholders' committee, as it is called. I don't think he rendered much service, with the exception of coming out here and spending a few minutes occasionally with the bondholders; and considering the use of the money which he received as such attorney, I should think $500 would be a reasonable compensation for all his services as such attorney in fact; he was a bondholder himself, and generally turned the bondholders over to Mr. Wheeler when they applied there for information. I think, from the conversation with Mr. Palmer, he told me that he received either $17,000 or $19,000 of the money received by P. Dow and himself.

Adjourned to the 27th, at 9 a. m.

SEPT. 27th, 1864.

Examination of Russell Sage continued:

52 I arranged with Messrs. Brown & Carlisle as to the compensation for their services, including the services of Messrs. Ewing & Browning, in this cause, in the Supreme Court of the United States; the sum to be paid to each, in addition to what they had previously received, except as to Mr. Brown, was $2,000, that is, $2,000 to Mr. Brown, $2,000 to Mr. Carlisle, and $2,000 to Messrs. Ewing and Browning. Mr. Carlisle had $1,000, and Messrs. Ewing and Browning had received $1,000 previously. Mr. Brown had a charge of $500 for previous services. I afterwards arranged with Mr. Brown for his services, coming from Washington here to attend the April term of this court, and the compensation for that service was fixed at $1,500. After the compensation had been agreed upon by Mr. Brown with Carlisle & Browning, at $2,000, as before stated, Mr. Ewing came on to Washington and complained, as Messrs. Brown & Carlisle informed me, that the sum of $2,000, in addition to what

they had received, was an inadequate compensation for the services rendered. Mr. Ewing was not present at the argument before the court, and took no part in it. I was present during the entire argument before the Supreme Court. I know of P. Dow's services as attorney in fact for the complainant here from the time of his appointment in the fall of 1859 down to May 1st, 1863. He had the general management of the business of the trustees and possession of the road for a portion of the time. He gave his whole time, I believe, or the most of it, during the period before named. I should say nearly half of that time he spent here, and the remainder in New York and Washington. I have consulted with bondholders, to the amount of $600,000, perhaps more than that, and they assented to a compensation of $5,000 per year, considering the responsibility, anxiety, annoyance, and absence from home. I should not consider the charge an unreasonable one, compared with compensations allowed for similar services. I know of Mr. Dow incurring large expenses for coming to Milwaukee and returning, and also in going to Washington on different occasions. I also know of his incurring expenses for printing. Mr. Carlisle informed me that he had received
$1,000 from Mr. Dow, and Mr. Wheeler informed me that he
53 had received $3,000 from Mr. Dow, and I have seen a letter from Mr. Ewing acknowledging that he had received $1,000 from Mr. Dow. Mr. Dow went to Washington last winter to advise and aid in getting the case ready for argument, and remained there during the whole of the argument. I think $250 would not be an unreasonable sum for his time and expenses on that trip to Washington. I know that Mr. Anderson was employed in the matter of the application for the appointment of a trustee in the place of Green C. Bronson, deceased. He was employed by Messrs. P. Dow and F. A. Palmer, acting for the complainant. The sum paid him for this service was $200. I was present at the argument of that case on two or three occasions.

Adjourned to the 28th inst. at 9 a. m.

SEPTEMBER 28th, 9 a. m.

Cross-examination of Russel Sage, in behalf of the Milwaukee and Minnesota Railroad Company.

Ques. Do you know that Mr. Dow was employed during all the time, from the fall of 1859 down to May 1st, 1863, in the performance of the duties of the trust?

Ans. I know of his being engaged most of the time between the 1st of November, 1859, and the 1st of May, 1863; and he did render some service later than that; and I do not know of his being engaged in any other regular business during that time.

Ques. Do you mean to say that you know, of your own knowledge, that Mr. Dow occupied himself so closely in the performance of his duties in the trust, as to prevent his doing any other business, and to entitle him to so large a salary as $5,000 per annum?

Ans. I do.

Ques. You have said that you were the attorney for Mr. Jas. T.

Soutter; what is the date of the power of attorney so given to you?

Ans. September, 1864.

Ques. Where was Mr. Soutter at the time that power of attorney was given to you?

Ans. He was in Europe. My appointment as attorney for
54 Mr. Soutter is a substitution executed by Timothy H. Porter, having date in Sept., 1864, and Mr. Porter was appointed as attorney of Mr. Soutter in December, 1863.

Ques. Do you expect to receive the sum of money claimed for Mr. Soutter for his services, and pay the sum over to him as his attorney for his use and benefit?

Ans. I do.

Ques. Did you know, at the time you received such power of attorney, that Mr. Soutter was at that time in the employment of the enemies of the United States, and engaged in aiding and assisting the confederate government, so called, in Europe?

(Objected to as irrelevant and immaterial. Overruled and exception taken.)

Ans. I did not then, and do not now.

Ques. Do you say that you have never heard that Mr. Soutter has been in the employment for the last two years of the rebel government?

(Objected to as incompetent and irrelevant. Objection sustained and exception taken.)

RUSSEL SAGE.

Examination of Normon J. Emmons, a witness produced, sworn, and examined in behalf of the complainants.

SEPTEMBER 28th, 1864.

Normon J. Emmons, being first duly sworn and examined, testifies as follows:

I am an attorney and counsellor at law, admitted to practice in the federal and State courts; have been engaged in practice for eighteen years. I know David E. Wheeler, of New York. I have read and heard read the testimony of Russel Sage, taken in the case in reference to the services of David E. Wheeler, rendered to the trustee and the bondholders in this cause, and I have also some personal knowledge of those services—not to the extent to which Mr. Sage has testified, but partially. I know of his coming out here to Milwaukee, and I know of his acting for them in New York, and have had consultations with him in New York.

Ques. What, in your opinion, is the value of those services, and what would be a fair and reasonable compensation therefor?

55 Ans. I base my judgment, not only upon what I know myself, but also upon what has been stated by Mr. Sage, and what I have learned from other sources, of the peculiar character of his services, and the extent of them; I estimate them worth $5,000. I fix that sum in my own mind, because other parties interested

have fixed upon that amount as a compensation for his services, and think it a fair and reasonable compensation.

Ques. Were you employed by or in behalf of the bondholders in this cause, or any portion of them, to a suit in the prosecution of the appeal in the Supreme Court of the United States? If so, state when you were so retained, for whom, and what services you rendered.

Ans. I was. I was first retained in the court below, and by various bondholders, representing first and last nearly eight hundred thousand dollars of the second mortgage bonds. I appeared for them on several occasions in the court below in the hearing of various motions and petitions, all after the original decree. I was also retained in several appeals to the Supreme Court of the United States, to assist in maintaining the integrity of those bonds. I spent nearly one hundred days in Washington on that business. At the same time, however, I had other and separate interests, connected with this same litigation, to look after while there. The second mortgage case, so called, however, was the chief and prominent feature.

Ques. What is the value of the services rendered by you to the bondholders in this case, and what would be a fair and reasonable compensation therefor?

Ans. I can only state, or rather I prefer not to state, further than that at some considerable time ago I rendered a bill for my services in Washington, and which I thought was fair and reasonable, and which has not been objected to. The amount of that bill was about twenty-five hundred dollars—a little over, I think. That included my cash disbursements. The bill for my services was two thousand dollars; I still think that a reasonable compensation. For the services which I rendered in the court below to those bondholders I have received my pay. I rendered much other service for the bondholders for whom I acted, and I never separated those services, and
56 I am unable now to fix any definite sum.

Ques. Have you been familiar with this suit since it was instituted up to the present time?

Ans. I have been.

Ques. State who acted as the solicitor in the case in the court below, and what, in your opinion, would be a fair compensation for his services for the entire litigation?

Ans. I take it for granted you mean the solicitor for the complainants. Considering the amount involved, the nature of the litigation, questions pending and the time consumed, I should say that six thousand dollars would be a very reasonable fee or charge. Thomas L. Ogden acted as solicitor for complainant.

Ques. Do you know what services Mr. Brown performed in this case in the court below, and what was the value of them?

Ans. I do know what services Mr. Brown rendered in this case in the court below, and think he ought to have $3,500 for the services rendered by him up to the date of the decree. I have before expressed my opinion on that subject, and still adhere to it.

Cross-examined by Mr. Fleming:

Ques. Was not Selah Chamberlain a party defendant to the original bill of complaint in this cause?

Ans. He was.

Ques. Were you not his counsel at the time this bill was filed in this case, and did you not put in an answer for him in this cause?

Ans. I was his counsel, and appeared and answered for him through the whole conduct of the cause.

Ques. Did you not also appear for him in the Supreme Court at Washington last winter as his counsel, and file a brief for him in this cause?

Ans. No, I did not appear for him. I think there was no appearance for him, so far as the second mortgage case itself was concerned; on its merits I appeared no more for Mr. Chamberlain and acted no further for him than I did for other bondholders. There were two appeals up there in the Supreme Court, known as Nos. 267 and
57 268, which came on to be heard with the second mortgage case, and which two appeals were assigned to me exclusively to argue. In those two appeals Mr. Chamberlain's rights, other than as bondholder, were discussed. In so far I acted in his behalf; but the same grounds of defence urged for him the whole body of bondholders whom I represented were interested in maintaining.

N. J. EMMONS.

Examination of Thomas L. Ogden, a witness produced, sworn and examined on behalf of James T. Soutter, trustee, &c.

Thomas L. Ogden, being first duly sworn and examined, testified as follows:

I am an attorney and counsellor at law; I have acted as solicitor for the complainants in this cause ever since it was commenced; in the fall of 1859, Messrs. Palmer and Dow came to Milwaukee for the purpose of instituting the proceedings in this case; at that time Mr. Chamberlain was in possession of the railroad: after much negotiation between Messrs. Palmer and Dow and Mr. Chamberlain, a written contract was entered into between them, by which Messrs. Palmer and Dow, for the bondholders, were to have possession of all the net earnings of the road. Mr. Palmer was here personally during these negotiations; after they were completed, he returned to New York, and to my knowledge has not been here since. Mr. Dow from that time until the end of May or the beginning of June, 1860, remained in Milwaukee, receiving from Mr. Chamberlain the receipts of the road, as contemplated in that agreement or contract. About the first of June Mr. Chamberlain surrendered possession of the road to Mr. Dow, and he (Dow) held possesion until possession was taken by the receiver; from that time until the spring of 1863 Mr. Dow spent a large portion of his time in Milwaukee, preparing testimony in the case, looking after the operation of the road, and consulting with and advising his attorneys; I should think that Mr. Dow, from my knowledge of his occupation during that period, must have devoted his whole or

nearly his entire time to the interests of the bondholders in this mortgage. I was present at the argument of this case in the court below, and know that Francis Randall took part in that argument; I
58 also know of my own knowledge that he prepared a brief therein; I think the compensation of one thousand dollars for his services on that argument a reasonable one.

THOMAS L. OGDEN.

Examination of N. A. Cowdrey, a witness produced, sworn and examined by complainant, September 27th, 1864.

N. A. Cowdry, being first duly sworn and examined, testified as follows: I am a counsellor at law, admitted to practice in the Supreme Court of the United States and in the fedeaal courts in the southern district of New York, and in the district of Connecticut, and have received and paid for a license from the Internal Revenue office; for the last six years I have given almost my whole time and attention to the foreclosure of railroad mortgages and to the adjustment of fees and charges of trustees and their counsel thereunder; I have heard the testimony of Russell Sage, given on his direct examination, as to the services of James T. Soutter and David E. Wheeler: I consider the amount charged by them as reasonable compensation for the services rendered by them, respectively—that is to say, $1,500 for Soutter, and $5,000 for Mr. Wheeler; Mr. Soutter's charge is as small, or smaller, than I have ever known for similar services; I represent four-fifths of the *cestui que trust* negotiated with him upon the subject, and induced him to agree take that amount, and thought I did a good thing for the bondholders in getting him to take so low an amount; I have always deemed it necessary for trustees residing in New York to employ local counsel there to aid in protecting the trust when the trust property was situated in other States, or at a distance from New York, and to consult with the bondholders and parties interested in the trust; under this trust there are, I think, from two hundred to two hundred and fifty persons interested, mostly residing in New York and vicinity; I am myself a bondholder under this trust; I went to Washington and employed Mr. J. M. Carlisle as counsel for the complainant myself; he had once been employed by Mr. Dow at a previous term of the court; I acted for Mr. Sout-
59 ter in employing him. Mr. Carlisle argued various motions made in the Supreme Court in this cause, and argued the cause on its merits when it was reached on behalf of the complainants. In my opinion, Mr. Carlisle's whole services were worth $3,000; I consider that a fair and sufficient compensation for his services. I know that Messrs. Ewing and Browning were also retained for the complainants in this cause; Mr. Ewing argued one or two motions in and about this cause, and Mr. Browning argued the main cause and took part in the argument of one motion; these are the same services included in the account of Thomas Ewing, esq., filed in this cause. I think the sum three thousand dollars ($3,000) a reasonable compensation for the services of Messrs. Ewing and Browning. Together with Mr. Russell Sage, I employed Mr. J. S. Brown as exam-

sel for the complainant in this cause; we were acting as the agents of Mr. Soutter. Messrs. Brown and Emmons prepared the brief, on the motions made at the last term of the Supreme Court of the United States, and on the argument of the main cause. Mr. Brown argued two motions and the main cause in the Supreme Court; he also came from Washington to Milwaukee at the last April term of this court, and argued various questions made at that court in relation to this trust. I consider the sum of $3,500 a reasonable compensation to him for such services. I also have some knowledge of his rendering some services at the request of P. Dow, late attorney for Mr. Soutter, for which he charged $500; I think the services worth $500.

Cross examined by Matt. H. Carpenter for the Milwaukee and Minnesota Railroad Company:

Ques. Do you know, of your own knowledge, whether Mr. Browning ever rendered any services for the complainant in this cause in Washington?

Ans. I do not think I was present at the argument; I did consult with Mr. Browning, and requested him to do certain things.

Ques. How long have you been a counsellor of the Supreme Court of the United States?

Ans. I was admitted at the December term, 1862.

Ques. Have you practiced in that court yourself, and to what extent?

60 Ans. I have; I am employed in the oldest case there, which has been pending about twenty-eight years; I have also been employed in all the litigation relating to the La Crosse road in that court.

Ques. How many causes have you argued in that court?

Ans. I have never argued any verbally; I have tried to furnish thunder for others from time to time.

Ques. For whom have you furnished thunder—for the complainant?

Ans. I have had consultations with each and every attorney and counsel employed for the complainant, and have given them the benefit of my ideas upon the various questions that have been brought up for the consideration of the counsel or court.

Ques. Which, in your opinion, professionally, is more difficult and valuable to, furnish thunder to others or to thunder it?

(Objected to on the ground that it is irrelevant and immaterial. Objection sustained, and exception taken.)

Ques. Do you know Messrs. Brown and Ogden, of Milwaukee, and their standing at the bar?

Ans. I think I do.

Ques. What is that standing?

Ans. Very good.

Ques. Were not Mr. Ogden and Mr. Brown perfectly competent to conduct this cause in the said district court, assisted by your counsel and ideas?

Ans. I had nothing to do with this cause before the appeal.

Ques. Do you know the standing of Mr. Carlisle, of Washington, as as a counsellor? If so, what is it?

Ans. He stands high.

Ques. Were not Mr. Carlisle and Mr. Brown, assisted by your own counsel and advice, perfectly competent to attend to this cause in said Supreme Court, on behalf of the complainant?

Ans. I think they were.

Ques. Do you not know that Mr. Browning stated to the Supreme Court, on the argument of this cause there, that he appeared only, for S. Chamberlain, and did not the court assign time to him, as representing a party other than the complainant?

Ans. I do not know; I do know of counsel so agreeing
61 among themselves to so divide up the record as that three might be heard by the court, made at the solicitation of the complainant or his representative, Mr. Sage.

Ques. What three counsel was it agreed to speak in the cause?

Ans. I am certifying this only from hearsay.

Ques. Was not Mr. Wheeler a bondholder during all the time you speak of his rendering services?

Ans. He has told me that he was.

Ques. In your opinion, were Mr. Ogden and Mr. Brown perfectly competent and sufficient to conduct this cause in said district court, up to the time of the appeal?

Ans. I think they were competent and sufficient to attend to the business here in court.

Ques. What was there to be done professionally in New York while this cause was pending in the district court?

Ans. I had no particular knowledge of this cause until after the appeal was taken; in similar causes counsel there have to prepare the evidence, give instructions to counsel here, and hold very frequent consultations with *cestui que trust*, and conduct a large correspondence with parties in interest.

N. A. COWDREY.

James S. Brown, being duly sworn and examined, testified as follows:

Ques. By Mr. Hill. Were you counsel for the complainant in this cause in the Supreme Court of the United States, and who else was counsel with you?

Ans. Some time in the month of November, 1863, I was requested by parties then claiming to act for the complainant in this cause, to ascertain whether either Mr. Carlisle or Mr. Ewing, who, as I had been informed, have been retained to argue the cause in Washington, had prepared a brief, and if not, then to prepare one myself; it was then understood that if Mr. Ewing should be present, he and Mr. Carlisle should argue the case; as a fact, Mr. Ewing personally took no part, and I both drew the brief and argued the case in conjunction with Mr. Carlisle and others. Mr. Carlisle and myself,
62 with others, likewise argued some motions; they were filed before the main argument of the case came on. The mo-

tions were overruled, so far as they affected the interests of the second mortgage, but we consented to have the cross bill considered as a part of the record. I may be mistaken as to Mr. Carlisle having taken an active part in the argument of those motions; he was present. The argument of the main cause took several days. It was conducted by Mr. Carpenter, myself, Browning and Carlisle. I do not know, of my own personal knowledge, what the particular employment of Mr. Browning was. I understand that at a prior term of the court Ewing, who was the partner of Browning, appeared with Mr. Carlisle for the complainants, on a preliminary motion in this case; that Ewing received a retainer from the trustee, and that in his absence Browning acted partially in pursuance of that retainer. After the case was argued, and before the decision, I was requested to make out my bill, and was told that they preferred then settling with and paying off the lawyers rather than to wait. I do not know who it was among those interested who gave this direction to me. I agreed to consult with Mr. Carlisle and Mr. Browning, and let them know what our charges would be. Mr. Carlisle and myself met by appointment, but Mr. Browning was not present. Mr. Carlisle, however, told me that Mr. Browning would consent to do as we did. Carlisle wanted me to fix the amount. I disliked it; and in fact, from an intimation that I had received, that Mr. Dow had charged me with a desire of increasing lawyer's fees in that case, I was determined to state an amount, either so low that no one could find fault, or leave it to Mr. Carlisle to take the responsibility of fixing a higher sum. I accordingly referred him to the fact that this was a proposition to pay before the case was decided, and that although we felt great confidence in the result, still there was a possibility that we might be defeated, and that our charge ought not to be an unreasonable one, even for that contingency. Carlisle—although I thought a little unwillingly—assented to the proposition, which was, that Messrs. Browning and Carlisle should each receive $2,000 in addition to what they had received for their services; and for drawing the brief, and the argument made by myself in the case, I should
63 receive the same sum, $2,000. This was agreed upon with the express understanding between Mr. Carlisle and myself that the amount was to be paid at once, and before the decision of the case. In the early part of February, 1864, and I think within a day or two after this communication, I wrote to Mr. Hughes, president of the St Paul road, stating the sum that had been agreed upon, and I think requesting that drafts might be forwarded, or that we might draw; although at this late time I should prefer referring to the letter, which is in Mr. Hughes's possession, rather than to rely upon my own recollection. I have no recollection of the proposition to take the $2,000 ever having been accepted by any one acting in the interest of the trustees prior to the final decision of the case. I know that nothing was paid to me until subsequently to the decision. After the decision, which doubled the amount of the decree below, and expressly made the costs a charge upon the funds in the hands of the receiver Mr. Carlisle informed me that as the other proposition had not been

acted upon, and the result had in every respect been so favorable to the trustees in the mortgage, he and Mr. Browning had concluded to charge $5,000 each, which they thought a reasonable charge; and I will add, which I thought so too. This fact I communicated to the same parties who had been talking with me, and they said they were willing to pay the $2,000 but not the $5,000. I will here state that the first sum of $2,000 was assented to by Mr. Carlisle, with a view to the fact that the cause was then undecided, and the same was to be paid before the cause was decided, and I have no doubt that both Carlisle and Browning would then have accepted that sum; but we all believed that the decision of the cause happening before final settlement, authorized a much higher charge, and made the first entirely insufficient. It is but right for me to say, that I subsequently accepted the $2,000, gave a receipt in full, but with the understanding, on my part at least, that if more was allowed to the others, there should be a similar increase of my own pay; and I filed my bill in the case at $5,000, with the consent of Mr. Sage, the person with whom I had settled, so to enable me to obtain the same amount with the rest. I made that settlement with the full belief that I was
64 entitled to more, but from the wish to avoid difficulties with clients, so far as had been paid, it was the understanding that my bill here was filed for the benefit of the trustees, or parties paying, and as to the surplus for my own benefit, I think my charge, as contained in the account here rendered, is not an unreasonable one.

Cross-examined by Mr. Carpenter:

Ques. The settlement that was made between you and Mr. Sage for your services, was it made after you knew of the decision, and was it made by Mr. Sage, acting for the masters in this cause?

Ans. It was, and I think it was with Mr. Sage It was done with some one acting for trustees, and the payment, as I understand, although not made out of the funds of the trustees, was made on their behalf. By referring to my memorandum-book, I see that on Tuesday, 15th day of March, I received a letter from Sage enclosing a check of the St. Paul Railway Company upon the Bank of North America, by which I was paid that charge.

Ques. Did any party in the Supreme Court litigate or question the right of the trustees to a decree according to the prayer of their bill, except those who are represented solely in that court by Mr. M. H. Carpenter?

Ans. Not so far as I understand it.

Ques. Was there, in your opinion, any reasonable necessity for the employment of any more than one counsel on the part of the trustees to argue their case in opposition to one counsel?

Ans. In a matter involving, as this did, including interest, of $1,490,000, and when in the court below *these* had been a decree for only 50 per cent., I should have considered it imprudent for those acting in behelf of the complainants to trust the cause to one counsel only, and I should have been unwilling alone to assume the responsi-

bility of the case; still it is possible that without any argument for the appellant, the same result might have been attained.

Ques. Do the rules of the Supreme Court permit more than two arguments on the same side of the cause?

65 Ans. I understand they do not except by special permission of the court.

Ques. Was any application made on behalf of the trustees for leave to make more than two arguments on their behalf?

Ans. I know of none.

Ques. Do you not know, on the argument of the cause Mr. Browning stated to the court that he appeared for Mr. Chamberlain, one of the defendants, to argue the question between Mr. Chamberlain, and the Milwaukee and Minnesota Railroad Company, another defendant?

Ans. My recollection is that out of court we agreed upon the order of argument and the length of time; it was agreed that I should open on behalf of the complainants; that he should follow in reply to me in behalf of his client, and Emmonds in behalf of Chamberlain; then Browning was to speak; then Carpenter again, and then Carlisle in behalf of the complainants was to close. So far as Browning was concerned, I do not now recollect whether or not it was stated to the court that he appeared in behalf of Chamberlain; but my recollection of his argument is, unless my memory deceives me, that more of his time was given to the 2d mortgage, and its defence, than to Mr. Chamberlain's separate interest.

Ques. Do you not remember that in the assignment of time to counsel, the four hours given to Emmons and Browning might be divided between them as they pleased?

Ans. I think it is very possible it might have been so, but I have no present recollection of it.

Ques. I understood that when you and Mr. Carlisle agreed to take $2,000 each, as stated by you, you both expected and believed that the decision of the cause would be what it subsequently was?

Ans. Yes; we were quite confident on the main points involved, and believed that it ought to be so as to the payment of attorneys' fees, but there was one point in which, in our view, the decree was more favorable than we had anticipated-that of allowing the holders of bonds the choice, in case of sale, either to take their money or have a sum invested for them, which would protect their bonds.

Ques. Was the decree more unfavorable to the complainants

66 than you expected, in this, that it gave one year's redemption after the amount should be ascertained in the court below, before there could be a sale?

Ans. The year's delay was most unexpected, at least to me, and it was injurious to the complainants. I wish to add to my direct testimony that since giving it I have read the testimony of Mr. Sage; that I still have no recollection that the proposition made by me in behalf of myself and others having been accepted prior to the decision, but I may have been mistaken as to that; that I have given the contents of my letter as near as I can recollect, but may have been mistaken, and prefer referring to the letter itself; that my recol-

lection of these matters may be imperfect, as I have never expected, either as party or witness, to be involved in any controversy on the subject.

JAMES S. BROWN.

66 *Exhibit No.* 1.—*H. L. Palmer.*

U. S. circuit court, September term, 1864.

JAMES T. SOUTTER, surviving trustee, &c.,
vs.
LA CROSSE & MILWAUKEE R. R. AND OTHERS.

James T. Soutter, the surviving plaintiff, respectfully applies to this court for an allowance to be made him for his services as trustee and as complainant in the above-entitled cause. He has been party litigant in this court and in the Supreme Court at Washington since May, 1859, and has received no compensation or pay for his services whatever.

September 17, 1864.

JAMES T. SOUTTER,
By N. A. COWDREY, *Att'y.*

Exhibit No. 2.—*H. L. Palmer.*

Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE & MILWAUKEE R. R. AND OTHERS.

The petition of Thomas L. Ogden, solicitor, shows to this court, that the bill of complaint in this suit was filed on or about the 9th day of December, A. D. 1859, to foreclose a mortgage executed by the defendant, the La Crosse and Milwaukee Railroad Company, to secure $1,000,000; that the complainant was resisted in the district
66*a* court for this district by defendants holding subsequent claims on the mortgaged property, and after a tedious litigation the said district court made a decree of sale adjudging the principal sum due to be $500,000; that on appeal to the Supreme Court the decree was reversed, and the case was remanded to this court with directions to make a decree for the full amount claimed by the complainants; that your petitioner has been the solicitor for the complainants throughout this litigation in the district and in the circuit court, and, in addition thereto, has acted as counsel in negotiations in view of a settlement of the matters in controversy; that your petitioner has received the sum of twenty-five hundred dollars and no more; that your petitioner believes that five thousand dollars would be a fair and moderate compensation for his services rendered in this suit, and prays that an order may be made directing the receiver to pay to him the sum of twenty-five hundred dollars, which, with the twenty-five hundred dollars already paid, will make the sum of five thousand dollars.

THOMAS L. OGDEN.

DISTRICT OF WISCONSIN, *ss:*

On this 13th day of September, A. D. 1864, personally appeared before me Thomas L. Ogden, and made oath that he had read the foregoing petition subscribed by him and knew the contents thereof, and that the same was true to his own knowledge except as to those matters stated on information and belief, and as to those matters he believes it to be true.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, District of Wisconsin.

66*b* *Exhibit No.* 3.—*H. L. Palmer.*

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company *et al.*

To the circuit court of the United States within and for the district of Wisconsin:

Your petitioner, James S. Brown, a solicitor and counsellor in the court and of the Supreme Court of the United States, respectfully shows to this honorable court that he was of counsel for the trustees of the 2d mortgage on the eastern division of the La Crosse road, and attended professionally to all charge of this cause for the complainants in the district court; that he counselled with the agents of the trustees out of court, and devoted a great amount of time to their business; that he prepared the brief for the complainants as appellants in the Supreme Court of the United States, and assisted in the argument of motions in the case and also of the main appeal; that he returned from Washington to Milwaukee in April last for the sole cause of attending to said case, and then assisted in the argument of motions in the case; that the rates charged are, in the opinion of your petitioner, reasonable, and he prays that his account as hereto annexed may be allowed, and the receiver be ordered to pay over to him the balance of said account shown to be due.

JAMES S. BROWN.

The trustees of the 2d mortgage on eastern division Dr. to James S. Brown.

	To professional services in the district court of the	
66*c*	U. S. in foreclosing the mortgage	$3,000 00
	To same on appeal to the Supreme Court of the U.S.	5,000 00
	To services in going from Washington to Milwaukee, and attendance and argument at April term, A. D. 1864	1,500 00
		9,500 00
	Cr.—By amount paid by trustees and ½ of the amount paid by receiver to Brown by the order of the court	2,500 00
	Balance	7,000 00

Exhibit No. 4.—H. L. Palmer.

NEW YORK, *March* 4, 1864.

Greene C. Bronson and James T. Soutter, or the survivor of them, or their successors, trustees under a deed of trust made by the La Crosse and Milwaukee Railroad Company, dated August 17, 1857, to D. E. Wheeler, Dr.

For professional services as counsel in the foreclosure of said deed of trust on morgage and disbursement from October, 1859, to the present date	$5,000
By cash at various times	3,000
Balance due	2,000

STATE OF NEW YORK, *city and county of New York, ss:*

David E. Wheeler, being duly sworn, deposes and says that he is an attorney and counsellor at law; that he was retained by the trustees named in the above account to take charge of the foreclosure of the mortgage known as the 2d La Crosse mortgage and that during
66*d* the whole of its progress he has been acting as such counsel for them, and devoted a great deal of time and attention to the foreclosure from its commencement unto the date of this bill; that this action has been vigorously litigated, and an appeal was taken and argued at Washington; that the deponent went twice to Milwaukee from New York, and the same number of times to Washington, to attend to the said foreclosure, and that the above charges are very moderate, and that his services were, in his judgment, actually worth more than the amount he has charged, and that he is really entitled to receive the two thousand dollars, the balance due of said bill.

D. E. WHEELER.

Sworn to before me this 29th day of August, 1864.

MATTHIAS BANTA, *Com'r of Deeds.*

Exhibit No. 5.—H. L. Palmer.

Supreme Court of the United States, Dec. term, 1863.

GREEN C. BRONSON *et al.*
vs.
THE LA CROSSE & MILWAUKEE RAILROAD *et al.* } No. 132.

At the December term, 1862, I was employed in this case and associated in it with Hon. Thomas Ewing, of Ohio. We received each one thousand dollars as a retainer, paid by Mr. Prentiss Dow, attorney of the trustees. It was a voluminous and complicated case, and
66*e* two other appeals, by Vallette *vs.* the same parties, and Chamberlain against the same, were upon the docket, were complicated with No. 132, required examination, and were examined by us.

At that term three distinct motions were made, two of which are reported in 2d Black, 524. These were made by parties intervening, not being parties to the record, and were irregular and necessarily occupied much of our time.

At the present term the following additional appeals were taken in the same matter, but growing out of subsequent proceedings, and consequently new questions were raised. These are No. 267, 268, 355, and 356, and divers motions were made against us and argued at this term. In all of these, as in the principal argument in No. 132 on its hearing, we were successful, and the matters in controversy decided in favor of our clients amounted to $500,000 and interest.

At the present term Mr. Ewing was represented by his partner, Hon. O. H. Browning, who took part in all the arguments.

We charge against the fund, under the direction of the circuit court, for these services the sum of $5,000 each; that is to say, for Ewing & Browning, $5,000; for J. M. Carlisle, $5,000; and we credit thereon $1,000 each, received as a retainer; and we ask the favor of the Hon. Judge A. J. Miller to make the necessary order that we
66*f* may be paid respectively by drafts forwarded to us at Washington city, payable to our order respectively.

J. M. CARLISLE.

WASH., *April*, 1864.

We concur in the above statement and claim.

T. EWING,
O. H. BROWNING.

I think the charge reasonable, considering the magnitude of the cases and the amount involved, and should be allowed.

April 18, 1864. DAVID DAVIS.

Exhibit No. 6—H. L. Palmer..

I was employed at the Dec'r term, 1862, by Bronson and Soutter, trustees, who represented the La Crosse and Milwaukee railroad, No. 198 on the docket of the Supreme Court of the U. S. Mr. Carlisle was associate counsel with me, and this cause, in the various phases which it assumed, occupied much time during that term. There were also several other appeals complicated with this, which required attention, and received it from us, as counsel in the principal case, to protect that case merely. These collateral causes are set out in a paper certified by Mr. Middleton, clerk, &c., and herewith filed. During the summer of 1863 I corresponded with Prentiss Dow, esq., agent for the trustees, and agreed to attend and argue the cause at the last term, but was taken sick and unable to attend, and Hon. O. H.
66*g* Browning appeared and argued the cause in my stead. The various steps taken in the case will appear by the paper above referred to. Mr. Browning and myself are reasonably entitled to a fee of $5,000 for the services rendered at the two terms, which we ask

the court having charge of the assets of the R. R. to allow us. All of which is respectfully submitted.

T. EWING.

Washington City, May, 20, '64.

Hon. A. J. MILLER.

Exhibit No. 7.—H. L. Palmer.

$886 15. WASHINGTON, *April* 14, 1864.

Pay to the order of D. W. Middleton, clerk of the Supreme Court of the United States, the sum of eight hundred and eighty-six dollars and fifteen cents, the same being the amount of costs due to him in the several appeals in the case of Green C. Bronson *et al. vs.* The La Crosse and Milwaukee Railroad Company *et al.*, and charge the same to the proper account.

S. CHAMBERLAIN.

Hon. RUSSEL SAGE,
No. 25 *William Street, New York.*

Indorsed: D. W. Middleton, cl'k Sup. Ct. U. S.: Pay American Exch. Bank, New York, or order.

JAS. ADAMS & CO.

Received payment.

AMERICAN EXCHANGE BANK.

66 *h* *Exhibit No. 8—H. L. Palmer.*

Circuit court of Milwaukee county, in chancery.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE R. R. Co. *et al.*

DISTRICT OF WISCONSIN, *ss:*

Russel Sage, being duly sworn, deposeth and saith, that in behalf of the complainant he paid for printing the brief for the complainant in the Supreme Court of the United States the sum of forty-two dollars.

RUSSEL SAGE.

Subscribed and sworn before me Sept. 19, 1864.

A. SCOTT SLOAN,
Clerk U. S. Ct. Ct. Wis.

67 *Exhibit No. 9.—H. L. Palmer.*

District (now circuit) court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

Disbursements of the complainants in and about their trust under the authority given in the mortgage or deed of trust.

Travelling expenses, postages, printing, copying papers, telegraph, clerks' certificates, &c., from Nov., 1859, to March, 1864		$1,549 62
Less refunded J. M. Miller, clerk		165 69
		1,383 93
Counsel fees, viz:		
Brown and Ogden	$1,000 00	
F. Randall	5,000 00	
Thomas Ewing	1,000 00	
J. M. Carlisle	1,000 00	
D. E. Wheeler	3,000 00	
	11,000 00	
Less paid by order of court	5,000 00	
		6,000 00
		7,383 93
J. M. Miller, clerk, for a copy of the record for the Supreme Court of the U. S		380 00
Deposits for costs with the clerk of the Supreme Court of the U. S		200 00
Prentis Dow, for services as agent and attorney in fact for complainant's trustees from Nov. 1, 1859, to May 1, 1863, at $5,000 per annum		17,500 00
Same, for expenses and attendance at Washington on the hearing		250 00
68 Legal expenses in the matter of the application for the appointment of a trustee in place of Bronson, deceased		200 00
F. A. Palmer, services as agent and attorney in fact of complainant, from Nov. 1, 1859, to September, 1864		5,000 00
Amount paid for repairs on the steamer Keokuk, upon the warrant of E. H. Gooderich, manager for S. Chamberlain, in March and April, 1860, before the trustees came into possession of the road		573 74
		31,487 67

Whole amount received	$34,739 95
Disbursements as above	31,487 67
Deposited with F. A. Palmer	3,252 28

STATE OF NEW YORK, *City and county of New York, ss:*

Francis A. Palmer and Prentis Dow, of the city, county and State aforesaid, being severally sworn, each for himself says, that he was, on the first day of November, 1859, duly constituted and appointed the agent and attorney in fact of the above-named Greene C. Bronson and James T. Soutter, trustees, &c., as above named in the above suit, and as such attorney and agent he has discharged the duties of said position to the present time; that the above is a true account of the charges and expenditures of said agents and attorneys in and about the said trust, and that the sums respectively paid for his personal services and responsibilities is a just and reasonable compensation for the same.

F. A. PALMER.
P. DOW.

Sworn to before me this 6th day of September, 1864.

WM. S. HASCALL,
Notary Public, City and County of New York.

69 *Exhibit No.* 10.—*H. L. Palmer.*

Supreme Court of the United States, December term, 1862.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees, &c., app'l'ts, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Henry Vallette, and al. } No. 198.

J. M. Carlisle, T. Ewing, M. H. Carpenter, N. A. Cowdrey, N. J. Emmons, for S. Chamberlain.

Wisconsin D. C. U. S.:

Dec. 5. Affidavit of F. T. James filed.

Dec. 5. Mo. of Mr. Black to intervene in behalf of Isaac Seymour *et al.*, and to dismiss appeal, filed.

Dec. 5. Ordered that motion be argued at some future motion day.

Dec. 19. Argument of motion postponed to 26 inst.

Jan. 16. Argument of motion postponed to 23d inst.

Jan. 23. Supplemental affidavit of F. T. James filed.

Argued on motion Jan. 23.

Feb. 10. Motion of Mr. Carpenter to dismiss Chamberlain's appeal filed.

Feb. 10. On motion of Mr. Carlisle, the motion of Mr. Carpenter set for argument on Friday, 13th inst.
Feb. 16. Motion of Mr. Black of 5 Dec. overruled.
Feb. 19. Motion of Mr. Carpenter to dismiss, &c., filed.
Feb. 20. Motion of Mr. Cowdrey to dismiss filed.
Feb. 20. Argued C. A. V.
Mar. 2. Motion to dismiss overruled.

December term, 1863.—No. 132.

Dec. 28. Motion for prohibition filed.
Dec. 28. Motion to perfect record filed.
Jan. 8. Motion to perfect record filed.
Jan. 8. Motion for prohibition filed.
Jan. 8. Motion to perfect record set for 15 inst.
Jan. 11. Motion for prohibition set for 15 inst.
Jan. 12. Motion to remand cause filed.
Jan. 15. Motion for prohibition argued.
Jan. 15. Motion to perfect record argued.
Jan. 18. Motion to remand cause overruled.
Jan. 18. Motion to perfect record granted by consent.
Jan. 18. Stipulation to perfect record filed.
Jan. 18. Cross-bill filed.
Jan. 20. Motion for prohibition suspended.
Jan. 29. Extension of time granted counsel.
Argued Feb. 1, 2, 3, 4, 5, 8, 9.
Feb. 23. Reversed with costs and remanded with directions, &c.
April 8. Leave granted clerk to issue mandate.

Supreme Court of the United States, December term, 1862.

HENRY VALLETTE, IMPLEADED WITH THE La Crosse and Milwaukee Railroad Company, app'l'ts.
vs.
GREENE C. BRONSON AND JAMES T. SOUTTER, trustees, &c.
} No. 200.

N. A. Cowdrey for S. Chamberlain and others.

Wisconsin D. C. U. S.:

Feb. 20. Motion of Mr. Cowdrey to dismiss filed.
Feb. 2. Motion argued C. A. V.
Mar. 2. Motion to dismiss overruled.

December term, 1863.—No. 134.

Argued Feb. 1, 2, 3, 4, 5, 8, 9.
23 Feb. Reversed with costs.
8 April. Leave granted to clerk to issue mandate.

December term, 1862.

SELAH CHAMBERLAIN, IMPLEADED WITH THE La Crosse & Milwaukee R. R. Co., appellant,
vs.
GREENE C. BRONSON AND JAMES T. SOUTTER, trustees, &c. } No. 203.

N. A. Cowdrey.

Wisconsin D. C. U. S.:

Feb. 10. Motion of Mr. Carpenter to dismiss Chamberlain's appeal filed.

Feb. 10. On motion of Mr. Carlisle, the motion of Mr. Carpenter set for argument on Friday, the 13th instant.

Feb. 16. Decreed to be dismissed for want of jurisdiction.

70 Supreme Court of the United States, December term, 1863.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, app'l't,
vs.
JAMES T. SOUTTER, SURVIVOR OF GREENE C. Bronson and James T. Soutter, trustees, &c. } No. 267.

M. H. Carpenter, N. A. Cowdrey, N. J. Evans.

Wisconsin D. C. U. S.:

Dec. 8. Motion of Mr. Cowdrey to dismiss filed.
Jan. 8. Motion to perfect record filed.
Jan. 18. Motion granted by consent, &c.
Argued Feb. 1, 2, 3, 4, 5, 8, 9.
Feb. 23. Decreed to be dismissed with costs.
April 8. Leave granted clerk to issue mandate.

December term, 1863.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, app'l't,
vs.
JAMES T. SOUTTER, SURVIVOR OF GREENE C. Bronson and James T. Soutter, trustees, &c. } No. 268.

M. H. Carpenter, N. A. Cowdrey, N. J. Emmons.

Wisconsin C. C. U. S.:

Dec. 8. Motion of Mr. Cowdrey to dismiss filed.
Jan'y 8. Motion for prohibition filed.
Jan. 8. Motion to perfect record filed.
Jan. 12. Motion to remand cause filed.
Jan. 18. Motion to remand cause overruled.
Jan. 18. Motion to perfect record granted by consent, &c.
Jan. 20. Motion for prohibition suspended.
Argued Feb. 1, 2, 3, 4, 5, 8, 9.
Feb. 23. Decreed to be dismissed with costs.
April 8. Leave granted clerk to issue mandate.

Supreme Court of the United States, December term, 1863.

LAWRENCE G. GRAHAM AND DONALD D. SCOTT, app'l'ts, *vs.* JAMES T. SOUTTER, SURVIVING TRUSTEE, &c. } No. 355.

M. H. Carpenter, J. M. Carlisle.

Wisconsin C. C. U. S.:

26 Jan. Stipulation to cure defect in citation.
12 May. Stipulation to dismiss filed.
12 May. Dismissed pursuant to 29th rule.

December term, 1863.

LAWRENCE G. GRAHAM AND DONALD D. SCOTT, app'l'ts, *vs.* JAMES T. SOUTTER, SURVIVING TRUSTEE, &c. } No. 356.

M. H. Carpenter, J. M. Carlisle.

Wisconsin C. C. U. S.:

Jan. 26. Stipulation to cure defect in citation.
May 12. Stipulation to dismiss filed.
May 12. Dismissed pursuant to the 29th rule.

Supreme Court of the United States, December term, 1862.

GREENE C. BRONSON *and al.*, app'l'ts, *vs.* THE LA CROSSE AND MILWAUKEE R. R. Co. *et al.* } No. 198.

The argument on the motion of Mr. Black to intervene was commenced by Mr. Gillett in support thereof, continued by Mr. Carlisle and Mr. Ewing in opposition thereto, and concluded by Mr. Black in support of said motion. Jan. 23.

GREENE C. BRONSON *et al.*, app'l't, *vs.* THE LA CROSSE AND MILWAUKEE R. R. Co. }

The motion filed yesterday to dismiss this cause was argued by Mr. Carpenter and Mr. Black in support thereof, and by Mr. Carlisle and Mr. Ewing in opposition thereto. Whereupon this court, not being now here sufficiently advised of and concerning what order to render in the premises, took time to consider. 20 Feb'y.

71 December term, 1863.

GREENE C. BRONSON *et al.*, app'l'ts, *vs.* THE LA CROSSE AND MILWAUKEE R. R. Co. } No. 132.

The argument of the motion for a writ of prohibition was commenced by Mr. Carpenter in support of the motion, continued by Mr. Browning and Mr. Emmons in opposition, and concluded by Mr. Carpenter in favor of the said motion. 15 Jan'y.

SAME
vs. } No. 132.
SAME.

The argument of the motion to perfect the record in this cause was commenced by Mr. Carpenter in support of the motion, continued by Mr. J. S. Brown and Mr. Carlisle in opposition, and concluded by Mr. Carpenter in favor of said motion. 15 Jan.

SAME
vs. } No. 132.
SAME.

The argument of the motion to remand the record in this cause was commenced by Mr. Carpenter in support of the motion, continued by Mr. J. S. Brown and Mr. Carlisle in opposition, and concluded by Mr. Carpenter in favor of said motion. 15 Jan.

GREENE C. BRONSON *et al.*, app'l'ts,
vs. } No. 132.
THE LA CROSSE AND MILWAUKEE R. R. CO. *et al.*

HENRY VALLETTE, &c., app'l't,
vs. } No. 134.
GREENE C. BRONSON *et al.*

Argument of these causes commenced by Mr. Brown, 1 Feb.

THE MILWAUKEE AND MINNESOTA R. R. Co.,
app'l'ts,
vs. } No. 267.
J. T. SOUTTER, SURVIVOR, &c.

2 Feb. Continued by Mr. Brown and Mr. Carpenter.
3 Feb. Continued by Mr. Carpenter.
4 Feb. Continued by Mr. Brown and Mr. Browning.

THE MILWAUKEE AND MINNESOTA R. R. Co.
vs. } No. 268.
J. T. SOUTTER, SURVIVOR, &c.

5 Feb. Continued by Mr. Browning.
8 Feb. Continued by Mr. Carpenter.
9 Feb. Concluded by Mr. Carlisle.

I, Daniel Wesley Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing are true copies of the docket entries and extracts from the minutes of said court in the several cases therein stated as they remain on the records of said court.

In testimony whereof, I hereto subscribe my name and affix the seal of the said Supreme Court, at the city of Washington, this eighteenth day of May, A. D. 1864.

[L. S.] D. W. MIDDLETON, *C. S. C. U. S.*

72 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

To the honorable circuit court of the United States, for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the twenty-eighth day of April, A. D. 1864, and of an order supplementary thereto made on the eighth day of October, A. D. 1864, modifying the said order of the twenty-eighth day of April, A. D. 1864, and of an order made herein on the seventeenth day of April, A. D. 1865, supplementary to and modifying the orders above mentioned, I, Henry L. Palmer, named in the said several orders as auditor, do respectfully report that I have been attended by Hans Crocker, esq., receiver, and by James S. Brown, esq., his counsel, by John W. Cary, esq., as counsel for the complaints and the Milwaukee and St. Paul Railway Company, and by Matt. H. Carpenter, esq., counsel for the Milwaukee and the Minnesota Railroad Company and Alexander Fleming, and have taken proofs in regard to the matters referred to me by the said several orders, in addition to the proofs on file and the records of this cause, which proofs are herewith returned, and consist of depositions and exhibits.

The exhibits are marked alphabetically from letter A to letter Y, both inclusive, Exhibit E continued, Nos. 1 and 2, following letter Y A A to Y Y Y No. 4, both inclusive, and from A A A to Z Z Z, both inclusive, and from No. 1 to No. 30, both inclusive; the letter J being omitted in each series of the alphabet.

That Mr. Carpenter, counsel as above, on the 30thday of July, A. D. 1864, made before me the motion in writing herewith returned and marked Exhibit A, which motion, after argument, I denied, and to this decision Mr. Carpenter, on behalf of his clients, then and there excepted.

That on the same day Mr. Carpenter, counsel as aforesaid, made before me the motion in writing herewith returned and marked Exhibit B, which motion, after argument, I overruled and denied, and to this decision the said Carpenter on behalf of his clients excepted.

That afterwards, and on the 25th day of August, A. D. 1864, Mr. Brown, on behalf of the receiver, moved that all testimony as to the relative rights of parties to the suit and others to the earnings of the road be excluded, and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver as rendered up to June 1st, 1864; and Mr. Cary, on behalf of the complainants in this case, moved to exclude all testimony relating to the relative rights of the eastern and western division of the road in the fund arising from the operation of the road since the appointment of the receiver; also all testimony relating to money which the receiver might or ought to have had in his hands which is not now or has not been in his hands, and that the investigation be

confined to ascertaining the actual amount of money in his hands subject to the order of the court which may be applicable to the payment of interest on the mortgage in this suit. After argument these motions were severally overruled. Messrs. Brown and Cary severally, and in behalf of their respective clients, then and there excepted to such decisions.

I further report that the receiver presented to me his books of account kept by him as a receiver, and a large mass of vouchers
72*a* for the expenditures made by him as a receiver, which books and vouchers were then presented for examination. Thereupon the respective parties before me stipulated and agreed that I should report, and I do therefore report further as follows, pursuant to such stipulations: That on the first appearance of the respective parties before me, Mr. Carpenter, solicitor as aforesaid, stated that the great mass of the accounts of the receiver would not be attacked before the auditor by him or his clients; that he would file with the auditor special exceptions to the several items of said account which he intended to attack, and that as to all items not so specially excepted to the auditor might be excused from the manual labor of examining the vouchers to sustain the same, and the said Carpenter did, in pursuance thereof, file with me said special exceptions to items which are herewith returned, and marked, respectively, Exhibits K K K and K K K continued.

I further certify and report that Hans Crocker was appointed receiver of the La Crosse & Milwaukee railroad from Portage City to La Crosse, and of the property appertaining thereto, in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, *vs.* the La Crosse and Milwaukee Railroad Company and others, on the eighteenth day of May, A. D. 1860, and qualified as such receiver on the seventh day of June, A. D. 1860. That he was appointed receiver of the entire road and appurtenances, in the case of Sebre Howard *vs.* The La Crosse & Milwaukee Railroad Company and others, the 9th day of June, 1860, and qualified on the same day. That the last appointment was declared in the order making the same to be "subject, nevertheless, to a prior order of the court appointing him, the said Hans Crocker, to be receiver of the western portion of the said road from Portage City to La Crosse. That the said Hans Crocker was appointed receiver of all the railroad of the said La Crosse & Milwaukee Railroad Company, being all the line of road extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, and other property, belonging to said company, including all property of said company appurtenant to the said road," by an order made in this cause dated July 6, 1860, subject, nevertheless, to a prior order appointing him, the said Crocker, receiver of the western portion of said road from Portage City to La Crosse. The last-mentioned order did not require any bond to be filed by the receiver or other qualification as such. That the said Hans Crocker was appointed receiver of the La Crosse & Milwaukee Railroad Company, under the bill, with all the powers of his original appointment, "by an order of the court made in the case of Bouton *vs.* The La Cros[illegible] Milwaukee Railroad Company

and others, on the eighth day of October, A. D. 1862." That the receiver took possession of the entire road from Milwaukee to La Crosse, and all its appurtenance, on the eleventh day of June, A. D. 1860, under the order above mentioned in the case of Howard *vs.* The La Crosse and Milwaukee Railroad Company and others, and also of the western division or that portion of the road extending from Portage City to La Crosse under the order above mentioned in the case of Bronson, Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and operated the same as one entire and continuous line of road under said two orders just above mentioned from the 11th day of June, A. D. 1860, until the 13th day of June, A. D. 1863, and also under the two orders last above mentioned from their respective dates on to the said 13th day of June, A. D. 1863.

I further certify and report, that the said Hans Crocker, as such receiver from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, has received and is chargeable with and accountable for the sum of four million five hundred and seventy-four thousand eighty-five dollars and fifty-seven cents, ($4.574,085 57.) This sum includes the gross earnings and receipts of the entire road from Milwaukee to La Crosse, from the said 11th day of June, A. D. 1860, to the 13th day of June, A. D. 1863, and does not include the earnings of the eastern division of the road from June 13th, 1863, to June 30th, 1864. This amount is obtained by charging the receiver the aggregate amount received by him as shown by his account filed in this cause June 1st, 1864, and also the amount received by him as shown by the account herewith returned and marked Exhibit E continued, as follows :

Gross amount received from June 11, 1860, to May 31st, 1864, as per account filed June 1st, 1864	$4,255,821 52
Gross amount received by Hans Crocker, receiver, from June 30, 1864, to February 28, 1865, as shown by account herewith returned and marked Exhibit E continued	318,264 05
Total	4,574,085 57

That the receiver disbursed from the 11th day of June, A. D. 1860, to the 28th day of February, A. D. 1865, four million five hundred and thirty-eight thousand seven hundred and ninety-eight dollars and sixty-one cents, ($4,538,798 61,) which sum, deducted from the aggregate amount received by and chargeable to the receiver, left a balance remaining in his hands February 28, 1865, of $35,286 96, subject to such allowances as may be made to the receiver for his services.

72*b*

The particulars in detail of such receipts and disbursements are contained in the receiver's account, filed June 1, 1864, and in the account herewith returned and marked Exhibit E continued. That the disbursements thus made by the receiver, and with which he is credited in his account, include the sum of seventy-three thousand

eight hundred and one dollars and ninety-two cents ($73,801 92,) paid on judgment in favor of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company; and to this payment special exception is taken by the counsel for the Milwaukee & Minnesota Railroad Company, in and by Exhibit K K K. I have ascertained and report that the several sums paid by the receiver on said Cleveland judgment, making in the aggregate the said sum of seventy-three thousand eight hundred and one dollars and ninety-two cents ($73,801 92,) were paid by him on the authority and in pursuance of two several orders made in the case of Greene C. Bronson, James T. Soutter and Shepard Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, at the dates and for the amounts following, viz:

June 29, 1861, ten thousand dollars	$10,000 00
July 18, 1861, twenty thousand dollars	20,000 00
And of two orders made in this cause, of the dates and for the amounts following, viz: April 22, 1861, twenty-eight thousand and eight hundred and one dollars and ninety-two cents	28,801 92
November 28, 1862, fifteen thousand dollars	15,000 00
	73,801 92

Copies of which orders are herewith returned, and marked respectively Exhibits E E E, F F F, G G G, H H H.

And I further report that the said orders were sufficient and proper authority for the receiver to make such payments, and that the same were properly made by him. I therefore audit such payments, and allow and credit the same to the receiver at the said amount of $73,801 92, and disallow the said exceptions of the Milwaukee & Minnesota Railroad Company thereto.

Such disbursements include the sum of $24,998 36 expended for new buildings, comprising the two items contained in Exhibit C, under the head of new buildings, eastern division, $10,757 88, and western division, $14,240 48; also the sum of $7,057 13, being the items contained in Exhibit E continued, under the head of new buildings, for that amount. That portion of those expenditures assigned to the eastern division under the head of new buildings in Exhibit C, viz., $10,757 88, is specially excepted to by the Milwaukee and Minnesota Railroad Company in Exhibit K K K, and the expenditure of $7,707 13, being the item under the head of new buildings in Exhibit E continued, is also specially excepted to by the same party in and by Exhibit K K K continued. I have ascertained and report that the said amounts thus expended by the receiver and credited to him in his said accounts under the head of new buildings were expended in the erection of new buildings which were necessary for the proper operation of the road, and that such expenditures were properly made and were reasonable, and I audit and allow the same to the receiver and disallow the exceptions thereto.

I further report that all the remaining disbursements made by the receiver from June 11, 1860, to May 31, 1864, embraced in his account

filed June 1, 1864, and making with the two items of $73,801 92 paid on the Cleveland judgment, and the item of $24,998 36 expended on new buildings first above mentioned, in the aggregate the sum of four million one hundred and eighty-five thousand seven hundred and four dollars and forty-four cents, ($4,185,704 44,) were actually made by him in the proper execution of his trust as such receiver, and that he is entitled to credit therefor in his account.

I further report that the disbursements made by the receiver from the 30th day of June, 1864, to the 28th day of February, A. D. 1865, embrace an item of $9,015 16 for "repairs of tools and machinery," contained in the account herewith returned and marked Exhibit E continued, which is specially excepted to by the counsel for the Milwaukee & Minnesota Railroad Company, and by Exhibit R R R continued. I audit and allow this item as a proper expenditure made by the receiver, and for which he is entitled to credit in his account, and disallow the exceptions thereto.

The disbursements made by the receiver during the period of time last aforesaid also embrace the sum of thirty-six thousand one hundred eighteen dollars and eighty-six cents, ($36,118 86,) contained in the account herewith returned and marked Exhibit E continued, under the head of "use of rolling stock." To this credit special exception is also made by the same party in and by Exhibit K K K continued.

72*c*

That the entire road and rolling stock were placed in the possession of the Milwaukee and St. Paul Railway Company by the orders made by the court in the several cases on the 12th day of June, 1863, one of which orders, viz., the order in the case of Bronson, Soutter and Knapp against the La Crosse and Milwaukee Railroad Company and others, on the 12th day of June, A. D. 1863, still remains in full force, and not reversed or rescinded. The rolling stock remained in the possession of the Milwaukee and St. Paul Company by virtue of the order last mentioned, and this sum is charged by that company to the receiver for use of rolling stock thus in its possession. That this item is a proper credit to the receiver in his account, and as between the eastern division and its owners and the Milwaukee and St. Paul Railway Company should be adjusted, auditing the account of the latter company. I therefore audit it and allow this item to the receiver as a proper disbursement made by him for which he is entitled to credit, and disallow the exception thereto.

The third item mentioned in the special exception of the Milwaukee and Minnesota Railroad Company, contained in Exhibit K K K continued to the account marked "Exhibit E continued," as follows, "Milwaukee and St. Paul Company $109,950 82," I suppose to refer to the 38th item contained in Exhibit E, and is not appropriate to any credit continued in Exhibit E continued, and I disallow said special exception so far as it related to any part of the account marked Exhibit E continued. All the other items contained in the credit side of the account marked Exhibit E continued, I audit and allow to the receiver as credits to which he is entitled for disbursements properly made by him in the execution of his trust as such receiver. I have

ascertained and further report that from the eleventh day of June, 1860, to the thirteenth day of June, 1863, the said Hans Crocker, receiver, operated and managed the business of the said railroad, as one entire line of road extending from Milwaukee to La Crosse, and received and kept and disbursed the income thereof as one common fund; and that during the period of time aforesaid, his account of receipts and disbursements as receiver was kept as one general account of the income derived by him from the business of the entire road, and the expenditures made by him in the operation of the entire road, without separation or division, except as to local earnings and local expenses; and that the road was properly operated in that manner, the income was properly treated by the receiver as a common fund, and the disbursements on account of the entire line of road were properly made therefrom.

I have ascertained and report that the sum of thirty-eight thousand five hundred and sixty-nine dollars and forty-two cents should be allowed to the receiver for his services as receiver from the 11th day of June, 1860, to and including the 28th day of February, 1865. This amount is made up as follows, viz:

For services as receiver from the 11th day of June, 1860, to the 11th June, 1863, three years, at $10,000 per year.	$30,000	00
For services as receiver from the 11th June, 1863, to the 28th February, 1865, one year, eight months and seventeen days, at the rate of $5,000 per year	8,569	42
Total	38,569	42

I have also ascertained and further report that the following sums should be allowed to the receiver for his expenses paid and incurred by him as receiver and not credited to him in his account as filed, viz:

The amount of Cary & Pratt's account against the receiver for professional services rendered in 1860 and 1861, and embraced in the account marked Exhibit L L L	$1,150	00
The amount of Cary & Pratt's account for professional services as attorneys and counsel for receiver from 27th October, 1860, to 12th June, 1864, allowed as charged in Exhibit M M M	5,435	00
For account of Cary & Pratt for disbursements made by them as attorneys for receiver in professional business transacted by them for receiver, allowed as charged in account marked Exhibit N N N	514	23
For account of Cary & Pratt for services as attorneys and counsel for receiver from Sept. 22, 1864, to March, 1865, allowed as charged in Exhibit X X X	700	00
For the account of James S. Brown for professional services as attorney and counsel for receiver, allowed as charged in the account marked Exhibit No. 12	1,600	00
Total amount of expenses	9,399	23

Amount brought forward	$9,399 23
Add amount of allowance for services as receiver as above	38,569 42
Total for services and expenses	47,968 65

72*d* I have further ascertained and report that the receiver is subject to the following contingent liabilities growing out of his receivership, and that the amount and nature of the estate of each is as hereinafter stated:

First, a claim of Frany Loof, administrator of the estate of Nicholas Thull, deceased, for five thousand dollars damages claimed for the death of said Thull, alleged to have been killed in consequence of the negligence of employees on the road while operated by the receiver. An action is pending on this claim against the receiver in the circuit court of Milwaukee co	$5,000 00
A claim of Peter Roth, administrator of the estate of Matthias Schule, deceased, for five thousand dollars damages, claimed for the death of said Schule, alleged to have been killed in consequence of the negligent operation of the road by employees. An action was brought on this claim in the circuit court of Milwaukee county, and was tried at the last term of that court, and the trial resulted in the plaintiffs being nonsuited	5,000 00
Also a claim of Joseph Leuts for ten thousand dollars for damages sustained by the breaking of his leg to such extent as to render subsequent amputation necessary, alleged to have been the result of negligent management of a train of cars by employees. On this claim an action was commenced in the circuit court of Monroe county, which has been removed to and is now pending in the circuit court of Milwaukee county. Amount claimed	10,000 00
Total amount of contingent claims	20,000 00

Schedule first, hereto annexed, states the account of the receiver as audited.

I further report that the Milwaukee and St. Paul Railway Company took possession of the eastern division of the La Crosse and Milwaukee railroad, extending from Milwaukee to Portage City, and of all the rolling stock and appurtenances thereon and belonging thereto, including tools, machinery, and supplies then on hand, pursuant to orders of the court made on the 12th day of June, 1863, as well as of the western division, or that portion of said road extending from Portage City to La Crosse, and operated the same and received the earnings thereof and made disbursements therefor from that date to and including the 30th day of June, A. D. 1864; that

"Exhibit E," herewith returned, contains a statement of the earnings of said road from Milwaukee to Portage City received by the said Milwaukee and St. Paul Railway Company, and the disbursements made by the said company on account of said road between the dates last aforesaid, as claimed by said company. To item No. 7, contained in this account, which is a credit to the Milwaukee and St. Paul Railway Company, as follows: "Repairs, tools, &c., $6,978 83," the Milwaukee and Minnesota Railroad Company takes special exception in and by Exhibit K K K. This credit is for the sum named expended in the repairs of tools and machinery, and as it is taken into consideration in determining the rent or compensation chargeable to the Milwaukee and St. Paul Railway Company for the use of repair shops and tools in a subsequent part of this report, I allow and audit the amount to the Milwaukee and St. Paul Railway Company as a proper expenditure and credit, and disallow the exception thereto.

The item No. 28, contained on the credit side of the account, "Exhibit E," new buildings, $27,497 84, is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that this sum was expended for the erection of new buildings on the machine-shop grounds in Milwaukee, extension of depot buildings, erection of water-houses, and other improvements on the eastern division; that all these erections were not necessary for the eastern division, operated as a road commencing at Milwaukee and terminating at Portage City, and not forming a part of a through route to the Mississippi river; that these improvements were projected and commenced and the expenditure mainly made while the two divisions of the road were operated together as one through line, and before the opening of another route from Portage City to Milwaukee was contemplated, and that as the said railroad from Milwaukee to Portage City was then circumstanced these buildings and improvements were necessary to its proper and profitable operation, and the expenditure was properly and prudently made. I therefore audit and allow this credit, amounting to said sum of $27,497 84, to the Milwaukee and St. Paul Railway Company, and disallow the said exception thereto.

The credit contained in Exhibit E, and marked No. 38, as follows: "Milwaukee and St. Paul railway $109,950 82," is specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. This credit is made up of the following items, viz:

Paid receiver April 23d, 1864	$68,285 50
Charge for the earnings of the western division from June 1st to June 12th, 1863, inclusive	20,761 17
Mileage on western division from April 25th to May 1st, 1865, inclusive	2,396 48
Same May 1st to June 1st, 1863	11,958 02
Same June 1st to June 12th, 1863	4,672 79
Advance charges on goods in transit June 13, 1863	1,886 86
	109,950 82

It contains a credit to the Milwaukee and St. Paul Railway Company of $19,027 29 for the use of rolling stock from April 25, 1863, to and including June 12, 1863, upon the theory that said company owned and was entitled to charge for the use of all the rolling stock on the road at that date, except the proportion of the stock purchased by the receiver which belonged to the eastern division under the provisions of the decree in the land grant case, which vested the title of that stock in the owners of the respective divisions in proportion to their net earnings from the 11th June, 1860, to the date of the decree. Applying to this credit the principle by which I determine and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by me, I report that the Milwaukee and St. Paul Railway Company is entitled to a credit in this item for mileage of rolling stock, for which credit is therein given to said company for the sum of $1,847 60, and is not entitled to credit for the additional sum of $17,179 69 embraced therein; and I sustain the said exception so far as it relates to the said $17,179 69, and deducting the last-named amount from the amount of said credit, I audit and allow the same at the balance thereof, that is to say, $92,771 13; and I disallow said exception so far as the same relates to such balance.

72e

The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company, under the head "Use of rolling stock," $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railway Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by me." The disposition of the last-mentioned exception and the proper performance of the duty imposed upon me by the order above mentioned involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 18 3; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter, and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box-cars and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road; that the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 88; that the value of the share owned by

the Milwaukee and St. Paul Railway Company was $52,199 00, and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be charged to the respective parties for the use of rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct.

I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division on the western division and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the receiver by the Milwaukee and St. Paul Railway Company for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in "Exhibit E continued," should be charged back to said company; that the Milwaukee and St. Paul Railway Company, on the 13th day of June, 1863, received from the receiver, with the road and rolling stock, tools and supplies belonging to the entire road, including supplies on the eastern division, amounting in value, as per receiver's inventory, Exhibit No. 74, $65,035 07; that these supplies belonged to the owners of respective divisions of the road in proportion to the amount of the rolling stock owned by each; that the proportion of such supplies which belonged to the eastern division was in value $59,885 98, and that the Milwaukee and St. Paul Railway Company is chargeable with that amount; that the Milwaukee and St. Paul Railway Company is entitled to credit, as against the receiver representing the eastern division, for the use of their share of the rolling stock on the eastern division, from the 13th of June, 1863, to the 28th of February, 1865, $19,667 00; and also for repairs of the share of the rolling stock belonging to the eastern division for the same time, $275,536 53, and the amount which the Milwaukee and St. Paul Railway Company credited to the receiver for the use of the rolling stock of the eastern division on its roads from the 30th of June, 1864, to the 28th of February, 1865, viz: $5,767 53, and contained in Exhibit E continued, should be credited to the said Milwaukee and St. Paul Railway Company in its account; that the Milwaukee and St. Paul Railway Company should be charged with the amount, which is charged by said company to the receiver, as shown in Exhibit E continued, for repairs of locomotives, $10,569 36, and the amount there charged for repairs of cars, $16,280 87; all use of rolling stock, and all charges for repairs thereto, being embraced in the charges and credits for use of rolling stock and for repairs of rolling stock to be made as above stated.

I further report that the Milwaukee and St. Paul Railway Company received with the eastern division of the said railroad, June 13th, 1863, 13,903 cords of wood, which was worth $2 50 per cord, amounting to the sum of $34,757 50, and as the eastern division is
72*f* charged in the account of said company with all the fuel used thereon, this amount is a proper charge against it. It is also proper to charge the Milwaukee and St. Paul company with the transportation of 1,300 tons of iron rails over the eastern division, from Milwaukee to Portage City, for its road between Portage City and Columbus, at $1 25 per ton, amounting to $1,625 00, and also with the transportation of 36 car-loads of ties over the eastern division, at $10 per load—$360 00, and the said company is also chargeable with and accountable for the gross earning of the eastern division from the 13th day of June, 1863, to the 30th day of June, 1864, amounting, as shown by Exhibit E, to $960,616 80; and I report that all the remaining expenditures and disbursements made by the Milwaukee and St. Paul Railway Company, and set forth in Exhibit E as credits, (except the items hereinbefore especially mentioned, and the items therein contained, No. 5 and 6, being for repairs of locomotives $8,433 79, and repairs of cars $19,990 20,) were actually and properly made by the said company, and are allowed and audited as proper expenditures duly made, and for which said company is entitled to credit.

I have further ascertained and report, that adjusting the account of the Milwaukee and St. Paul Railway Company upon the principles above stated, the said company is chargeable with and accountable for the sum of one million two hundred and fifty-two thousand one hundred and thirty 43-100 dollars $1,252,180 43

And is entitled to credits amounting in the aggregate to nine hundred and twenty-five thousand eleven 91-100 dollars 925,011 91

Leaving a balance due by said company to the receiver of three hundred and twenty-seven thousand one hundred and eighteen 52-100 dollars 327,118 52

I further report, that the income of the eastern division of the road for the months of May and June, 1864, was received and the operating expenses thereof for the same time were disbursed by the Milwaukee and St. Paul Railway Company, and are embraced in the account of said company as credited; that the receiver took possession of the eastern division of the road on the 1st day of May, 1864, but the income and disbursement thereof for said months of May and June, 1864, are not embraced either in the account of the receiver filed June 1st, 1864, or with the account herewith returned and marked Exhibit E continued. The earnings and disbursements of the eastern division for the two months mentioned are properly carried into the account of the Milwaukee and St. Paul Railway Company, but as the receiver took possession of the road on the 1st day of May, 1864, he is chargeable with its earnings and accountable for its management from that

time, and he is chargeable with the net earning of the eastern division for the two months named, in addition to the amount embraced in his account as audited.

That the net earnings of the eastern division for May and June, 1864, amount to the sum of forty-seven thousand five hundred and fifty-seven 42-100 dollars $47,557 42

This amount added to the balance in the receiver's hands Feb. 28th, 1865, viz: 35,286 96

Would leave a balance in his hands at that date eighty-two thousand eight hundred and forty-four 38-100 dollars 82,844 38

Subject to such allowance as may be proper for his services as receiver, and for expenditures made and incurred by him for legal services heretofore rendered as above set forth.

And I further report, that I have considered and examined the several exceptions of Alexander Fleming and the Milwaukee and Minnesota Railroad Company to the account of the said Hans Crocker, receiver, filed June 1st, 1864, and the supplemental account filed June 28th, 1864, and that the said exceptions filed by each of said parties, and respectively numbered from No. 1 to No. 8, inclusive, are not well taken, and are each and all of them disallowed.

H. L. PALMER.

"A"—Schedule first.

Hans Crocker, receiver, Dr.

To gross receipts, as receiver, from June 11, 1860, to May 31, 1866, as shown by account filed June 1st, 1864		$4,255,821 52
To gross receipts, as receiver, from June 30th, 1864, to February 28th, 1865, as shown by Exhibit E continued		318,264 05
		4,574,085 57
By expenditures from June 11th, 1860, to May 31st, 1864, as shown in detail by receiver's accounts filed June 1st, 1864	$4,185,704 44	
By expenditures from June 30th, 1864, to February 28th, 1865, as per Exhibit E continued	353,094, 17	
		4,538,798 61
Balance in hands of receiver Feb. 28th, 1865		35,286 96
72 *g* By amount allowed receiver for services from June 11th, 1860, to Feb. 28th, 1865	38,569 24	
By amount due to Cary & Pratt for professional services allowed as receiver	1,150 00	
By amount due Cary & Pratt for professional services allowed as receiver	5,435 00	

By amount due Cary & Pratt for professional services allowed as receiver	514 23	
By amount due Cary & Pratt for professional services allowed as receiver	700 00	
By amount due James S. Brown for professional services allowed to receiver	1,600 00	
		47,968 65
Balance due receiver		12,681 69

Contingent claims against the receiver at the amount claimed, $20,000.

Amount of net earnings months of May and June, 1864	$47,557 42
Add balance Feb. 28th, 1865, as above	35,286 96
	82,844 38
Deduct allowances as above	47,968 65
Balance	34,875 73

"*B*"—*Schedule second.*

Milwaukee and St. Paul Railway Company in account with Hans Crocker, receiver.

To gross earnings eastern division La Crosse and Milwaukee railroad from June 13th, 1863, to June 30, 1864	$960,616 80
To use of railway stock belonging to eastern division, from June 13, 1863, to Feb. 28, 1865	123,374 40
To this amount charged receiver for use of rolling stock from June 30, 1864, to Feb. 28th, 1865, in Exhibit E continued, now charged back	36,118 86
To amount of supplies received with and belonging to the eastern division, June 13, 1863	59,885 98
To amount charged receiver for repairs of locomotives from June 30, 1864, to Feb. 28, 1865, "Exhibit E, continued"	10,569 36
To amount charged receiver for repairs of cars from June 30, 1864, to Feb. 28th, 1865, in "Exhibit E, continued"	16,280 87
To 13,903 cords wood received with eastern division, June 13, 1863, at $2 50 per cord	34,757 50
To 1,300 tons iron transported on eastern division	1,625 00
To 36 car-loads ties transported on eastern division	360 00
To rent of repair shops, tools, and machinery on and belonging to eastern division, from 13, 1863, to Feb. 28, 1864—1 year, 8 months, and 10 days—valued at $50,000, at 10 per cent	8,541 66
	1,252,130 43

By items of credit contained in Exhibit E, excluding the amount of items Nos. 4, 5, 38 and 41, 42	$531,269 72	
By credit in item No. 38, Ex. E, at the amount at which the same is audited	92,771 13	
By use of rolling stock of Milwaukee and St. Paul Company on eastern division from June 13, 1863, to Feb. 28, 1865	19,667 00	
By repairs of rolling stock of eastern division by Milwaukee and St. Paul Company	275,536 53	
By amount credited to the receiver for use of rolling stock of eastern division on roads of St. Paul Company, as shown by "Exhibit E, continued"	5,767 53	
		925,011 91
By balance due the receiver by St. Paul Company		327,118 52

73 U. S. circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor, trustee, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

In the matter of auditing the accounts of Hans Crocker, receiver, a summons having been issued returnable this 30th day of July, A. D. 1864, at 10 o'clock a. m., and served upon the respective parties, which summons is herewith returned, the respective parties appeared before H. L. Palmer, auditor, by counsel, as follows: Hans Crocker, receiver, by James S. Brown, esq., his counsel; the complainant and the Milwaukee and St. Paul Railway Company by John W. Cary, esq., their counsel; Alexander Fleming and the Milwaukee and Minnesota Railroad Company by Matt. H. Carpenter, esq., their counsel.

Mr. Carpenter, on behalf of the Milwaukee and Minnesota Railroad Company and Alexander Fleming, made a motion, in writing, that the auditor make an order herein requiring the receiver to make and file a new account, which motion is hereto annexed and marked Exhibit A. After argument the motion was overruled and Mr. Carpenter excepted. Mr. Carpenter, on behalf of the Milwaukee and Minnesota Railroad Company and Alexander Fleming, then submitted the objection and motion in writing herewith returned and marked Exhibit B; pending the consideration of which the further hearing was adjourned to August 2d, 1864, at 9 o'clock a. m.

AUGUST 2d, 1864—9 o'clock a. m.

Parties present as before.

The objection and motion pending at the adjournment was overruled and the counsel for the Milwaukee and Minnesota Railroad Company and Alex. Fleming excepted.

Mr. Brown, on behalf of the receiver, moved for a further continuance of the hearing to Monday, the 8th day of August.

Mr. Carpenter objected and insisted upon proceeding at once.

Mr. Brown, for the receiver, then offered all the books and vouchers relating to the accounts of the receiver with a view to their examination by the auditor, and also by all the parties interested in the accounting, and states that the books and vouchers are voluminous and are now at the receiver's office, which is the most convenient place for examination, and offers to produce them here or at any other place that the auditor shall direct.

Mr. Carpenter states to the auditor that he or his client may avail themselves of the foregoing civility to him and them personally with becoming gratitude, but objects and protests that nothing can be considered as offered to the auditor to influence his finding, judgment, or report, except legal testimony offered before the auditor according to the course and practice of the court.

The hearing continued to the 8th day of August, 1864, at 9 o'clock a. m.

AUGUST 8, 1864—9 a. m.

73*a* Parties present as before.

The receiver, by Mr. Brown, his counsel, presents to the auditor his books and vouchers, which he submits to the auditor for examination. He also personally appears before the auditor offering to submit to personal examination as to the correctness of his accounts and to do such other things as the auditor may direct in order to show the correctness of his accounts. The books offered are ledgers A and B, journals A, B, and C, cash-book, operating expense book A and B, and thereupon the several witnesses whose depositions follow were examined from time to time until the testimony was finally closed.

74 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above-entitled cause of the 28th day of April, A. D. 1864, commencing August 8th, 1864.

MONDAY, *August 22nd*, 1864.

Present: Henry L. Palmer, auditor, John W. Cary, of counsel for the complainant and the Milwaukee and St. Paul Railway Company, James S. Brown, of counsel for Hans Crocker, esq., receiver, Matt. H. Carpenter, of counsel for the defendants, Alexander Fleming and the Milwaukee and Minnesota Railroad Company.

Edwin H. Goodrich, being called as a witness on the part of the defendants, Alexander Fleming and the Milwaukee and Minnesota Railroad Company, and having been previously duly sworn, testifies as follows, viz:

I am manager of the Milwaukee and St. Paul railway, which road is located from Portage City west to La Crosse, and from Prairie Du Chien junction, by way of Watertown and Columbus, to Portage City, from Watertown to Sun Prairie, and from Horicon to Berlin and Omro.

75 Ques. How long have you been engaged in railroad employment, and in what capacity?

Ans. Have been engaged in railroad business nine years, and for eight years as superintendent and manager.

Ques. How long have you had the actual superintendence of the road from Milwaukee to La Crosse, sometimes called the La Crosse and Milwaukee railroad?

Ans. Since some time in the year 1856. I cannot tell the date of my appointment.

Ques. By whom have you been employed as such?

Ans. By the La Crosse and Milwaukee Railroad Company, by Selah Chamberlain, by Hans Crocker, receiver, by the Milwaukee and St. Paul Railway Company, and by Hans Crocker, receiver, again.

Ques. Are you now in the employment of Hans Crocker, receiver?

Ans. Yes, and have been since the time that Crocker came into possession, about the first of May last. I am employed in operating the whole road for the St. Paul Company, and by Mr. Crocker for the eastern division.

Ques. Has Hans Crocker, as receiver, been in receipt of the revenues of the eastern division and rolling stock pertaining thereto since the first day of May last?

Ans. He has either received them or they have been placed to the credit of the eastern division of the L. C. and M. Railroad Company on the books of the Milwaukee and St. Paul Railway Company, and monthly statements have been rendered to him of the amount.

Ques. Which is it?

Ans. I don't think he has received any money; it is my impression it has all been credited. No money has been paid to him since the first of May.

Ques. Has Mr. Crocker, as receiver, kept any books in regard to the receipts and disbursements in operating the eastern division since the 1st of May last?

Ans. Not in detail as the business progressed from day to day.

Ques. Have not the disbursements relating to the operating
76 of the eastern division, and the revenues and receipts therefrom, in fact been made and received by the Milwaukee and St. Paul Railway Company, and do not the books of the said company purport to contain the same?

(Objected to on the ground that the account rendered, and subject to examination, is the account to the 1st day of June, and no item since that date is a proper subject of examination. Objection sustained, so far as relates to items of account after the 1st of June.)

Ans. The receipts were received and the disbursements were made by the Milwaukee and St. Paul Railway Company, and the books

do show that; and monthly statements of the receipts and disbursements have been furnished by that company to the receiver.

Ques. Upon the basis of division of earnings between the eastern and western divisions, adopted by the receiver up to June 13th, 1863, and deducting from the gross receipts of each division only the disbursements properly chargable to each division for operating the same, without charging either division for the use of rolling stock, what would be the amount of the net revenue belonging to the eastern, from the 11th day of June, 1860, to the 13th day of January, 1862, and what to the western division?

Adjourned to the 23rd inst. at 10 a. m.

AUGUST 23rd, 1864—10 o'clock a. m.

Parties present as before. Edwin Goodrich continued:

Ans. $566,545 07 the eastern division, and the amount belonging to the western division for the same time $113,666 32. Exhibit F is the statement showing these amounts and the division.

Ques. If from the gross receipts of the several divisions you deduct the expenses for operating the same respectively, does the result show what railroad men call the net earnings of the several divisions?

Ans. Yes, it does.

77 Ques. Conceding that of all the rolling stock on the whole road on the 11th day of June, 1860, except the 40 box-cars, specially described by number, belonged to the eastern division, what would be a reasonable charge to the western division for the use of rolling stock, as the same has in fact been used thereon for three following terms of time, viz: 1, from June 11th, 1860, to January 13th, 1862; 2, from January 13th, 1862, to May 7th, 1863; 3 from May 7th, 1863, to June 1st, 1864?

Ans. For the first period of time: for the use of locomotives, 15 cents per mile; for the use of passenger cars, 2 cents per mile; for the use of baggage and mail cars, 2 cents per mile; for the use of freight cars, 1 cent per mile. For the second period of time: for the use of locomotives, 20 cents per mile; for the use of passenger cars, 4 cents per mile; for the use of baggage and mail cars, 2 cents per mile; for the use of freight cars, 1 cent per mile. For the third period of time: for the use of locomotives, 25 cents per mile; for the use of passenger cars, 5 cents per mile; for the use of baggage and mail cars, 3 cents per mile; for the use of freight cars, 2 cents per mile.

(Mr. Brown objected in due time to the foregoing question and answer, because it has no relevancy to the matter of accounts submitted to the auditor for examination, and the answer of the witness was taken subject to such objection.)

Ques. Can you furnish to the auditor a statement showing how much should be charged to the western division for the use of rolling stock during the said three terms of time, at the several rates given by you in your last answer, and upon the basis mentioned in the foregoing questions?

(Objected to for the same reason as above. Objection overruled.)

78 Ans. I cannot furnish a statement that would be absolutely correct of the mileages of engines and cars on the western division, but can furnish one that would approximate to correctness, and be very nearly correct.

Ques. Is there any other person who, from his connexion with the operation of the road, could probably give the information called for by the foregoing question more accurately than you can?

Ans. I don't know that there is. I should not do it myself, but through various clerks in the office. I can furnish all the information that can be furnished on that subject.

Direct examination of this witness is here suspended.

79 Edwin H. Goodrich recalled.

Ques. Have you prepared any of the statements requested? If so, will you produce them and explain the contents thereof?

Ans. I have not prepared any of the statements, and on examination I find it impracticable and impossible to do so, except a statement of the division of the rolling stock purchased by the receiver, in proportion to the net earnings of the eastern and western divisions respectively, from June 11th, 1860, to January 13th, 1862. The reason why I cannot make the statement of the mileage of all the different kinds of rolling stock is that the system of accounts never contemplated any such statement being called for. When making my answer that I could do so, I supposed that our book of train reports would furnish the necessary data, but on examination I find that it does not.

Ques. What was the amount of rolling stock purchased by the receiver, by cost price, from June 11th, 1860, to January 13th, 1862?

Ans. $147,985 99 up to January 1st, 1862. During the month of January about $700 was charged to that account.

Ques. Of this amount, separating between the eastern and western divisions upon the basis of their respective net earnings from June 11th, 1860, to January 13th, 1862, as stated by you, what amount would belong to the eastern, and what to the western division?

Ans. Eastern division, $121,787; western division, $26,199.

80 Ques. Have the books and accounts of the receiver been so kept that an approximation can be made as to what should be charged to the western division for the use of the rolling stock, upon the basis and during the terms of time submitted to you in the former question upon this subject?

Ans. The books of account show nothing whatever in regard to the movement of rolling stock. The only data we can have for ascertaining the movement of rolling stock during the periods mentioned are the time-tables then in fore, and a book kept showing the movements of trains. From those a statement of the number of trains run can be made, but the number of cars of each description run cannot be ascertained.

Ques. Can you make and furnish to the auditor here a statement [illegible] result desired, and in which you can,

by resolving all doubts in favor of the western division, be sure that your statement is not injurious to that division?

Ans. I would not attempt to make one from any data I have.

Ques. Is there any person who can testify with more certainty than you can upon this subject; or is there any source from which we can obtain any more definite information upon the subject than you are able to testify to and furnish to us?

Ans. I don't know of any person who can testify with any more certainty than I can upon that subject, and I don't know of any sources, other than those named, from which information can be gained. And any person familiar with railroad accounts is as capable of making an approximate statement as I am, he having access to the data in our possession.

Ques. From your general knowledge of the condition of the whole road, the manner in which the two divisions have been operated, and the use of the rolling stock upon the two divisions, and calling the whole rolling, on the road when the receiver was appointed, worth $———, what percentage upon this amount, in your opinion, would be a fair and equitable rent or compensation for the use of said rolling stock upon the western division, assuming that all of it, except the forty box-cars described by numbers in the land grant
81 deed, belonged to the eastern division from the 11th of June, 1860, to the 13th of January, 1862?

Ans. I have never given the subject any consideration, and cannot answer the question.

Ques. Upon the basis aforesaid, and for the time last aforesaid, ought the western division, in your opinion, to pay anything for such use of rolling stock?

Ans. During the period mentioned competition with the lower roads was strong, and this road was running to establish itself as a through route, and both freight and passengers were transported at a loss to the company in competition with the lower roads, for the purpose of establishing itself as the through route to the northwest, and, in my opinion, the western division should not be chargeable with any considerable sum for the use of rolling stock.

Ques. Was not the western division as much interested as the eastern division in having the reputation of this road established as a through route?

Ans. Yes.

Ques. Aside from the circumstances mentioned by you, and supposing the two divisions to have been separate and independent roads, and that the eastern division had loaned to the western division the whole amount of rolling stock on the road on the 11th of June, 1860, except the said 40 box-cars, what percentage upon the cost price would be a fair compensation for the use of the same, as it was used upon the western division from June 11th, 1860, to January 13th, 1862?

(Objected to by Mr. Cary as hypothetical, theoretical, and immaterial. Answer taken subject to the objection.)

Adjourned to 2 o'clock p. m.

Ans. In my opinion it would be worth for the amount used the cost of keeping it in repair, and 15 per cent. per annum of the cost of the property, provided a fair compensation is paid by the eastern division to the western for the business brought to the eastern division by the use of that stock.

(Mr. Carpenter here moved to strike the proviso out, as not
82 responsive to the question and irrelevant. Overruled and exception taken.)

Ques. Upon the same basis and conditions, what percentage would be such compensation from January 13th, 1862, to May 7th, 1863?

Ans. It would be the same per cent. on the same value of the stock, and the same would be true of all the different periods down to June 1st, 1864.

Ques. Of the rolling stock on the road when the receiver was appointed, was it worth more from January 13th, 1862, to May 7th, 1863, than from June 11th, 1860, to January 13th, 1862? If so, about what per cent.?

Ans. I should say it was worth twenty-five per cent. more, present depreciated currency being the standard of value.

Ques. What per cent. was it worth more from May 7th, 1863, to June 1st, 1864, than from June 11th, 1860, to January 13th, 1862?

Ans. Fifty per cent. on the same standard of value.

Ques. From June 11th, 1860, to January 13th, 1862, what were the local earnings of the eastern division, and what of the western division?

Ans. I cannot give those answers. The books of account have not been kept so as to show it. It can be picked out.

Ques. Were the local earnings proper of the eastern division greater or less than those of the western division during that time?

Ans. They were greater.

Ques. About what proportion?

Ans. About two and a half to one. This is mere guess-work. That is the best of my judgment.

Ques. How was this from January 13th, 1862, to May 7th, 1863?

Ans. My answer to the previous question was intended to cover the whole time, from June 11th, 1860, to June 1st, 1864.

Ques. Which would be more valuable, the western division, from La Crosse to Portage, without connexions from Portage east, or the eastern division, from Portage to Milwaukee, without connexions from Portage west?

83 (Objected to as immaterial. Objection overruled and exception.)

Ans. The eastern division would be most valuable.

Ques. Which division has it cost the most per mile to operate, taking the year together?

Ans. It has cost more to operate the eastern division.

Ques. How, and why is this?

Ans. Because a greater number of trains have been run and more business done on the eastern division.

Ques. Which division has it cost the greatest percentage upon its earnings to operate, since the receiver was appointed?

(Objected to as immaterial. The objection overruled and exception.)

Ans. The western division.

Ques. Does the item of sixty thousand dollars in the account filed in court, in the April term, 1864, enter into the item of $89,658 23, rendered in the account of the St. Paul Company in the item as "renewal of track," being item No. 27 of the account marked Exhibit E?

Ans. Assuming that the account shown to me is a copy of the account filed by the receiver, the item of $60,000 "for rolling iron rails" was an estimated amount of liabilities assumed by the Milwaukee and St. Paul Railway Company, on account of the eastern division, and any amount paid for rolling iron rails subsequent to the 4th of April, 1864, and prior to the 30th of June, 1864, enters into and makes a part of the sum of $89,658 23.

Ques. Had any portion of that $60,000 been expended by the receiver, or by the M. & St. P. Railway Company, prior to the rendering of the account to the court in the April term, 1864? If so, what amount?

Ans. None of it had been expended. It was as I stated before—an estimated amount for that purpose. In the spring of 1864, arrangements were made with the Chicago Rolling Mill Company, by the Milwaukee and St. Paul Railway Company, for rolling two thousand tons of rails for the eastern division, and it was estimated
84 that it would cost about $40 per ton. Previous to the April term of the United States court, in 1864, about five hundred tons of rails had been rolled and paid for; and the sum of $60,000, stated in the account, was estimated to be the amount for which the Milwaukee and St. Paul Railway Company was liable to the Chicago Rolling Mill Company for the work then yet to be performed under the engagement.

Ques. Had any amount, if so, what amount, been paid prior to the filing of that account at the April term, 1864, for rolling iron under that contract?

Ans. Yes, about $20,000, more or less.

Ques. How much has been expended since the rendering of that account for rolling iron under that contract, and when?

Ans. About $22,000, and the money has been expended as fast as we could cause the work to be performed.

Ques. By whose direction, procurement, or request, was that contract made for rolling iron?

Ans. It was made by the request and assent of all parties interested, and was a matter of necessity. I mean by all parties interested, the St. Paul Company and the receiver.

Ques. How long after the contract was made before the receiver had knowledge of it?

Ans. It is my impression that he had knowledge of it at the time. It was talked of by the engineers.

Ques. Has all the iron that has been rolled and paid for under that contract been laid down upon the eastern division?

Ans. It has up to the 31st day of August, 1864. Since that date about forty-two tons of rails, rolled under that agreement, have been received and used on the Milwaukee and St. Paul Railway Company's road west of Portage City.

Ques. What is that iron received since August 31st, 1864, and used on the western division, worth per ton?

(Objected to as immaterial.)

Ans. (Taken subject to objection.) Worth about one hundred and twenty-five dollars per ton.

Adjourned to Monday, Sept. 5th, 1864, at 9 o'clock a. m.

85 SEPTEMBER 5th, 1864—9 a. m.

Parties present as before.

Edwin H. Goodrich's examination continued.

Ques. What is the value of the repair shops in Milwaukee, pertaining to the road, including machinery, tools and other things appurtenant to or used with them?

Ans. Fifty thousand dollars, I suppose.

Ques. How much has been expended on that property since the receiver was appointed?

Ans. I should judge fifteen or twenty thousand dollars, but don't know precisely. The amount can be ascertained, that is, the amount expended, chargeable to the eastern division.

Ques. Item No. 28, of Exhibit E, is a charge "for new buildings, $27,497 84." Where are those new buildings, what are they, and by what authority were they constructed?

Ans. That item embraces the new buildings erected on the machine shop grounds in Milwaukee, depot buildings at Portage City, extension of depot buildings, erection of water-houses, and other improvements on the eastern division. There was no authority from the court for these erections, except the general order of the court and the necessities of the road.

(The latter branch of the answer is objected to as not being responsive to the question. Question reserved.)

Ques. How much of this sum was laid out upon the depot building at Portage?

Ans. Between $3,000 and $4,000.

Ques. Have all the amounts charged in the various items of account marked "Exhibit E" actually, and in fact, been expended, and were they so expended before the account was rendered to the auditor; or does any item include any and what amount reserved or held for future disbursements, or as indemnity for any real or supposed liability, as the said $60,000 item was reserved in the account rendered to the court at the April term, 1864?

Ans. All the items charged in Exhibit E have been actually expended, and were expended before the account was presented to the auditor, or have been paid out since. They were all then

86 entered on the books to the credit of the parties, and the statement does not show any sum held or reserved for future disbursements, or liabilities, as was the case with the said item of $60,000.

Ques. Has all the iron re-rolled and paid for under the arrangement spoken of by you before, actually been laid down upon the eastern division, except that which you testified had been laid down upon the western division?

Ans. It has all been delivered upon the eastern division, and has all been laid down, except fifty or one hundred tons, which is now being laid.

Ques. Has the two thousand tons of iron provided for in that arrangement been fully paid for, so far as regards the account against the eastern division?

Ans. It has not been fully paid for, because the 2,000 tons have not been re-rolled.

Ques. In the account rendered to the court at the April term, 1864, there was an item of $60,000 reserved for this rolling of iron; you now say that about $22,000 has since been paid on that account. Now, does the balance of $38,000 continue in the hands of the St. Paul Company for future disbursement?

Ans. The balance of $38,000 has not been expended.

Ques. Is that $38,000 included in the item No. 40, on account marked Exhibit E?

Ans. It is not in that item, nor in any other item on Exhibit E.

(This question and answer are objected to by Mr. Brown, for the reason that there is no charge for this $60,000 for rolling iron in the account of the receiver under examination; the only charge on this account being for the amount actually expended for re-rolling iron.)

Ques. Won't you explain, so that it can be comprehended by even a lawyer, how and when the eastern division gets the benefit of the $38,000, balance of the $60,000 shown in the account rendered to the court at the April term, 1864?

Ans. I have answered previously that the sum of $60,000 was an estimated liability of the Milwaukee and St. Paul Company, on account of the eastern division; also that $22,000 of that amount,

87 or about that sum, has since been expended on account of rolling iron for said division. The eastern division will not get the benefit of the $38,000 balance, because it forms no part of the receipts or disbursements.

Ques. Item 39, of account marked Exhibit E, is "for use of rolling stock, $166,192 30." Will you state what rolling stock is charged for the use of, the rates of charging, and the mileage therein? State fully, and explain the whole basis of that charge, showing the rolling stock is assumed to be divided, and all the bases or principles on which the charge is made.

Ans. The St. Paul Company claims to own twenty-three engines and fifty-two and a half (52½) per cent. of eight engines, the latter purchased by the receiver, or eighty-seven and one-half (87½) per cent. of the whole number of engines. It also claims to own two hundred and four (204) box-cars or freight cars, and fifty-two and one-

half (52½) per cent. of two hundred and forty-four (244) freight cars, the latter purchased by the receiver, or seventy-four (74) per cent. of the whole; and also seventeen (17) passengers cars, and fifty-two and one-half (52½) per cent. of two passenger cars, placed on the road by the receiver, or ninety-five (95) per cent. of the whole; also twelve (12) mail and baggage, six (6) caboose, and seventy-six (76) platform cars, and for the proportion of the rolling stock used on the eastern division the eastern division is charged in the proportions stated above, at the following rates: From June 13th, 1863, to February 1st, 1864, locomotives twenty (20) cents per mile; passenger cars, four (4) cents per mile; baggage and mail cars, two (2) cents per mile; freight cars, one (1) cent per mile; platform and caboose cars, one (1) cent per mile. From February 1st, 1864, to June 1st, 1864, locomotives, twenty-five (25) cents per mile; passenger cars, five (5) cents per mile; baggage and mail cars, four (4) cents per mile; freight, platform, and caboose cars, two (2) cents per mile. The schedule hereto annexed, marked Exhibit K, is a statement of the amount of inventory of the material on the eastern division at the date therein mentioned, and the eastern division is credited with its proportion, and on the western division at the same rates.

Ques. Was all this rolling stock, the use of which is charged for in this item, on the road when the receiver was appointed and
88 took possession, June 11th, 1860, except that which you specify above, as having been procured or purchased by the receiver?

Ans. Yes.

Ques. During this time in which you have kept a mileage account to charge the eastern division upon the basis of an arbitrary division of rolling stock made by yourselves, have you also a mileage account which can be used to charge the western division for the use of rolling stock, if the auditor or court should hold that all the rolling stock, except the forty (40) box-cars, belonged and belongs to the eastern division?

(Objected to by Mr. Cary, for the reason that it assumes that there has been an arbitrary division of rolling stock. Overruled and exception.)

Ans. We have such an account if the data has been preserved, from which that account was made up, and I presume it has.

Ques. Can you, and will you, and within what time will you furnish such statement to the auditor?

Ans. I think I can, I think I will, and I will undertake to have it done in three days.

Ques. What would be a proper rent for the use of the repair shops, blacksmith shops, &c., at Milwaukee, from June 13th, 1863, to June 1st, 1864, as the same were used by the St. Paul Company, including tools, machinery, and everything appurtenant to the shops?

Ans. Ten per cent. upon the valuation over and above the expense of keeping the tools and machinery in repair.

Ques. About what amount in value of supplies in and about the workshops on the eastern division, did the St. Paul Company take possession of on or about the 12th of June, 1863?

Ans. About $125,000. That is as near as I can recollect about it.

Ques. Has any charge been made in any of these accounts against the St. Paul Company for any of these supplies?

Ans. There has not. There is no charge against the St. Paul Company for any of the supplies on hand.

Ques. Have those supplies, on hand when the St. Paul Company took possession, been used up by it?

Ans. They have been used as required from time to time.

89 Ques. What would it cost now to replace the same supplies, which you say were worth about $125,000 when the company took possession?

Ans. It would cost about the same proportion that the value of currency bears to the value of gold.

Ques. Would it cost twice as much to replace it now as you say it was worth then, or what greater or less proportionate amount?

Ans. Some articles would cost one-quarter more than they were worth then, others one-half, others three-quarters, others double, and some even greater than that.

Ques. Would two hundred and fifty thousand dollars, in your opinion, replace the supplies as they were when the St. Paul Company took possession of them, or what other sum would?

Ans. I think two hundred and fifty thousand dollars would furnish supplies.

Ques. Item 38 of account E is, "Milwaukee and St. Paul Railway Company $109,950 82." Will you state of what particulars that item is composed?

Ans. Earnings of the eastern division, collected by the receiver, from June 1st to June 13th, 1863 ..... $20,761 17
Mileage of engines and cars from April 25th to June 13th, 1863 ..... 19,027 27
Cash paid advance on freights received for shipment prior to June 13th, 1863 ..... 1,886 86
Cash, April, 1864 ..... 68,285 50

Total 109,950 82

This item for rolling stock is made up on the same basis as the charge for rolling stock above mentioned, as I have explained above.

Adjourned to Thursday morning, 8th Sept., at 9 a. m.

SEPTEMBER 8TH, 1864.

Ques. I see, by referring to the auditor's notes of your testimony, that you have made several changes in your answers, the first being in regard to the rent of rolling stock on the western division, and the amended answer is no answer to the question. I now repeat the question, and ask, what per cent. upon the whole amount in value

90 of rolling stock on the road June 11th, 1860, except the said forty box cars, would be a proper compensation for the use of the rolling stock on the western division as the same was used then,

from June 11th, 1860, to January 13, 1862, upon the basis included in the original question?

Ans. In my opinion it would be worth for the amount used the cost of keeping it in repair, and fifteen per cent. per annum of the cost of the property, provided a fair compensation is paid by the eastern division to the western division for the business brought to the eastern division by the use of that stock.

Ques. Upon the basis above stated, in your opinion and best judgment, what percentage of the rolling stock which was on the road June 11th, 1860, was used upon the western division from June 11th, 1860, to January 13th, 1862?

Ans. I would guess that there was thirty per cent. of it.

Ques. What percentage thereof from January 13th, 1862, to May 7th, 1863?

Ans. I guess from thirty-five to forty per cent.; say thirty-five per cent.

Ques. And what per cent. from May 1st, 1863, to June 1st, 1864?

Ans. Forty per cent. The foregoing proportions are the proportions of said stock that were actually in use during those periods.

Ques. Taking the whole time from June 11th, 1860, to January 13th, 1862, state, to the best of your judgment and opinion, as to what percentage of the whole rolling stock was in use upon the whole road.

Ans. For six months in each year during that period of time the whole of the rolling stock was employed during the remaining six months in each year, from forty to fifty per cent. was employed.

Ques. Thanking you for the information voluntarily given, will you please answer the question last put, namely: During the whole time from June 11th, 1860, to January 13th, 1862, according to the best of your judgment and belief, what percentage of the whole rolling stock was in use upon the whole road?

(Mr. Brown objected to the question on the ground that it
91 had been answered, and is unfair and disrespectful to the witness. Objection overruled and exception noted.)

Ans. Not putting you under any obligation for the answer given, I cannot answer the question more definitely than I answered it before.

Ques. What six months in each year during that period was the whole rolling stock employed as stated by you?

Ans. During the months of April, May and June, and September, October and November, and the balance of each year the proportion stated, from forty to fifty per cent. of it.

Ques. Does this last answer also apply to the whole time, from January 13th, 1862, to June 1st, 1864?

Ans. Yes.

Ques. To your answer as to the value of rolling stock, you have added the words "present depreciated currency being the standard of value." By this do you mean United States paper currency?

Ans. When the rolling stock was purchased, it was at a time when currency and coin were of equal value; at the present time, taking coin as the standard of value, United States and State currency is

worth about forty per cent. of its representative value. That is the kind of currency of which I speak.

Ques. Since June 11th, 1860, about how much in coin has been received by the receiver from the operation of this road?

Ans. I have no means of knowing, but should estimate the amount at $5,000.

Ques. Have not the receipts and disbursements and operations of the road been almost exclusively in, and carried on by, this depreciated currency?

(Objected to by Mr. Brown on the ground that by the laws of the United States the legal-tender notes are the standard of value, and the difference between gold and paper does not in law represent a depreciation; and the question assuming as a fact that it does. Objection overruled and exception.)

Ans. The operations of the road have been almost exclusively carried on in currency since June 11th, 1860, but during some portion of that time coin and currency have been nearer of equal value than they are at present.

92 Ques. What time?

(Objected to as wholly immaterial and irrelevant. Overruled and exception.)

Ans. I can't give data as to gold quotations and differences of value.

Ques. Did you make your former estimate as to the value of this rolling stock in different periods upon the basis of the difference between the value of coin and this currency in those periods respectively?

Ans. I did.

Ques. In the notes of your answer to a former question as to said $60,000, when you said that the sum of $60,000 was withheld as an estimated liability, &c., you have erased the words "withheld as." Was not this sum of $60,000 kept back or withheld by the St. Paul Company from the receiver at the time the account was made up, which was rendered to the April term, 1864?

Ans. I have attempted to explain in every answer that I have made in reference to the $60,000, that it was an imaginary amount for which the St. Paul Company was liable, and that said sum of $60,000 does not appear upon the books of the Milwaukee and St. Paul Railway Company, and that the Exhibit marked E contains a true statement of all the receipts and disbursements on account of the eastern division, between the dates appearing at the head of the account, and that the balance, as shown on that exhibit, was the balance due the eastern divsion on the 30th day of June, 1864, according to the best of my knowledge, information, and belief, and I know of no other sum or sums due said division, for that period of time.

(Mr. Carpenter moved to strike this answer out, as not responsive to the question.

On motion, question reserved.)

Ques. Did not the Milwaukee and St. Paul Railway Company pay to Hans Crocker, the receiver, about April 1st, 1864, the sum of $68,285 20?

Ans. They did, and it is charged in account on the paper marked Exhibit E.

Ques. Was not the sum arrived at, at that time, by deducting
93 from the moneys admitted by the company to be in its hands belonging to the eastern division, among other items, this item of $60,000 as shown in the account rendered to the April term, 1864?

Ans. The sum of $68,285 20 was arrived at by the president of the Milwaukee and St. Paul Railway Company and the receiver, and the said sum of $68,285 20 was a payment on account of the amount due the eastern division, against the credits as shown in Exhibit E.

Ques. Did they know, at the time this sum was arrived at, the fact as you have stated therein in your testimony in regard to the $60,000?

Ans. The receiver had an opportunity at all times of knowing the exact state of the accounts, and I presume he knew at that time, but cannot state whether he knew it or not. The books of the St. Paul Company were always open to him for examination, as to the operations of the eastern division.

Ques. Did the receiver at that time know that no part of that $60,000 had been then actually paid out by the St. Paul Company?

Ans. I think he did.

Ques. Was not this account, which was rendered to the court by the receiver at the April term, 1864, and which shows this balance of $68,285 20, made out and furnished to the receiver at that time by the St. Paul Company?

Ans. I don't think it was.

Ques. How, why, and for what was that money paid?

Ans. It was paid by check and on account, as I have before stated.

Ques. If that was not a settlement or balance arrived at at that time, why was that precise sum, so many dollars and so many cents, paid at that time?

Ans. I cannot answer that question otherwise than to say, that that was a sum arrived at by those gentlemen at that time. There has been no settlement of account on the books of the company.

Ques. Assuming that this account rendered to the April term, 1864, by the receiver, is as follows:

94 "Milwaukee and St. Paul Railway Co., in account with Hans Crocker, receiver, DR.

To gross earnings of the eastern division of the La Crosse & Milwaukee railroad, from June 13th, 1863, to April 1st, 1864, 9 months and 17 days.....	$688,665 86
CR.	
By operating expenses; including use of rolling stock of Milwaukee & St. Paul Railway Co.....	452,452 05
	236,214 81

DR.

Amount brought forward		$236,229 81
To amount due receiver to Milwaukee and St. Paul Railway Company for money received by him for operation of western division from April 25, 1863, to June 13, 1863, and for back charges, paid for receiver	$41,675 32	
Materials purchased for the E. div	28,620 63	
Paid for rolling iron rails	60,000 00	
200 tons iron rails purchased	23,000 00	
State taxes	14,633 66	
		167,229 61
Balance		68,285 20

Was not the item of $6,000, or that amount, withheld or received by the St. Paul Company at the time that account was rendered to the court at the April term, 1864?

Ans. I don't know anything about that account; nothing of that kind appears on the books of this company.

Ques. Was not the real amount of money in the hands of the St. Paul Company, at the time that account was made up, $128,285 20, or about that sum?

Ans. If a statement of account had been made from the books of the Milwaukee and St. Paul Railway Company at the time this account was filed, such account would have shown a balance due the eastern division, equal to the amount of $128,285 20.

Ques. Would it have shown any greater amount, and what amount?

95 Ans. I cannot state precisely, but it would have shown about that amount, in my opinion.

Ques. From the appointment of the receiver, to the 13th of June, 1863, what rates were charged to the Horicon railroad for business done for it?

Ans. We gave the Horicon road a drawback during a portion of that time, of thirty per cent. of our rate, between Horicon and Milwaukee. During another portion of the time we divided the way bills, giving to that road one-half, and taking one-half ourselves, between all points on that road and Milwaukee; and since June 11th, 1863, the Milwaukee and Horicon railroad's proportion has been seventy per cent. of the through rate, and the proportion of the eastern division of the La Crosse and Milwaukee railroad was thirty per cent., except upon passenger business, which has always remained substantially as it was in the original contract.

Ques. Has the eastern division received a less percentage for the business it has done for the Horicon road since June 13, 1863, than formerly?

Ans. It has.

Ques. About what per cent. less?

Ans. The difference between fifty per cent. and seventy per cent. on freight.

Ques. Since June 13, 1863, what sum has been received from, or charged to, the Horicon road for freights?

Ans. I will undertake to ascertain it. I cannot tell it now.

Ques. Was the eating-house at Portage built and paid for from the earnings of the eastern division?

Ans. It was not.

Ques. By whom was it built?

Ans. It was built by the Milwaukee and St. Paul Railway Company.

Ques. Was any part of the expenses of building it embraced in any of the items of the account marked Exhibit E?

Ans. No.

Ques. On which division of the road is it situated?

Ans. As I understand it, it is situated on the western division.

96 Ques. Is it east or west of the Portage depot?

Ans. East.

Ques. Does not the eastern division terminate west of the Portage depot?

Ans. As I understand it, it does not.

Ques. Why do you preface these answers by "as I understand it?" Do others understand it differently?

Ans. I understand the eastern division to extend to Portage City, and to be ninety-five miles in length; others may understand it differently. I have heard the point disputed.

Ques. While the eastern division was being constructed, was it not understood by the officers, employees, and contractors of the La Crosse and Milwaukee Railroad Company that the said eastern division extended to a point west of the present site of the Portage depot, and that from Milwaukee to that point was ninety-five miles?

(Objected to for the reason that the eastern division, for the purposes of this suit, is fixed by the terms of the mortgages to Palmer and to the complainants in this case, which is to Portage City, a distance of ninety-five miles from Milwaukee, and that the understanding of the officers, employees and contractors could not vary it, or have any influence upon it. Overruled and exception.)

Ans. At the time of the fixing of the divisions, by order of the board of directors in October, 1856, it was understood that the eastern division terminated at a point where the Portage division intersected the line from Milwaukee to La Crosse. That point is near the canal bridge, and east of the depot. Reference is made to plats on file in the office of the secretary of state, for the precise point. The line from Beaver Dam to Portage City was under contract and substantially constructed before the road was divided into divisions by any act or resolution of the board of directors that I know or recollect of. It was generally understood that the distance from Milwaukee to the Portage City station was about nine-five miles—that is, ninety-five miles of main track.

Adjourned to 2 o'clock.

Ques. Under what contracts were the eastern and western divisions respectively constructed?

97 Ans. Several contracts were made previous to the Cleveland contract, for the construction of portions of the road east of Rock river. The Cleveland contract was made after the forfeiture of other contracts, extending to Rock river. After the forfeiting and disposal of other contracts, a contract was made with Selah Chamberlain and S. H. Alden, a copy of which is hereto annexed and marked Exhibit A A. Then a contract was made with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit B B. Subsequently a contract was made with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit C C. A supplementary agreement was entered into with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit D D. A further contract was entered into with Selah Chamberlain, a copy of which is hereto annexed and marked Exhibit E E. Another contract was entered into with Selah Chamberlain, marked Exhibit F F. A further contract was entered into with Selah Chamberlain, marked Exhibit G G.

(The foregoing contracts are objected to by Mr. Cary, upon the ground that they are irrelevant. Overruled and exception.)

Ques. Was not the road completed to a point west of the present site of the depot at Portage, under the contract with Chamberlain relating to the eastern division?

Ans. The road was completed to a point west of the depot at Portage, under the contract with Chamberlain and Alden.

Ques. What point is that, and how is it marked with reference to the stations in the field-notes?

Ans. I do not know.

Ques. Where are the field-books kept by the engineers who superintended the construction of the eastern division?

Ans. All the field-books I know of are in the engineer's office.

Ques. State as near as you can to what point the road was constructed under the Chamberlain and Alden contract?

(Objected to by Mr. Brown on behalf of the receiver, as irrelevant. Overruled and exception.)

98 Ans. To about one hundred feet west of the western end of the present depot buildings at Portage City.

Ques. In all the accounts of the company, previous to June 13th, 1863, was not the road from Milwaukee to this point treated as the eastern division, and from that point to La Crosse as the western division?

Ans. It was.

Ques. Did not the construction of the western division, under the contract with Chamberlain for constructing that division, commence at this point?

Ans. The work of constructing the road under the contract with Chamberlain, a copy of which is marked Exhibit C C, commenced at this point, one hundred feet west of the depot at Portage.

Ques. Did not the Milwaukee and St. Paul Railway Company, after it took possession on the 13th day of June, 1863, keep its account on

the basis that the eastern division extended to this point west of the depot?

(Objected to by Mr. Cary as immaterial. Overruled and exception taken.)

Ans. The Milwaukee and St. Paul Railway Company kept its accounts upon the idea that the Portage depot was on the eastern division.

Ques. When did the fortunate idea that the eastern division did not reach the Portage depot first strike the Milwaukee and St. Paul Railway Company, so far as you know?

Ans. The question was raised after the location of the line from Columbus to its intersection with the line from Milwaukee to La Crosse, and the actual measurement of distance was made in July of the present year.

Ques. Had there, to your knowledge, been any claim or pretence by any persons interested prior to July last, that the limit of the eastern division was this side of the Portage depot?

Ans. Yes; I think that has been a point in dispute, and testimony has been taken on that point, to establish how far the eastern division extended and where it terminated.

99 Ques. Has anybody ever testified, to your knowledge, before to-day, that the eastern division terminated east of that depot?

Ans. I do not know that there has.

Ques. Have you not testified yourself before to-day, that the eastern division did extend west of the Portage depot?

Ans. I have testified upon that subject, and that the road was completed to the point one hundred feet west of the west end of the present depot building under the Chamberlain and Alden contract. Whether I testified that that was the termination of the eastern division or not, I cannot now recollect. At the time of giving such testimony I did not recollect the action of the board in separating the road into divisions.

Ques. After it was ascertained, in July last, that it was important for the St. Paul Company to claim east of the Portage depot, was not a measurement made by that company for the purpose of confining the eastern division to a point east of that depot?

Ans. A measurement was made after the 1st of July last, to ascertain the exact point where ninety-five miles in distance from the commencement of the track in Milwaukee would terminate. It has always been understood by the civil engineers, and other officers on the road, that it was more than ninety-five miles from the commencement of the track here in Milwaukee to Portage City station; and it was ascertained by the measurement made in July last, that the distance of ninety-five miles was reached at a point about four hundred feet east of the junction of the line from Columbus to Portage City with the line from Milwaukee to La Crosse, and about three-quarters of a mile east of the Portage City depot; and from the commencement of the track in Milwaukee to the point one hundred feet west of the Portage depot is about ninety-five and eighty one-hundredth miles.

Ques. Do you know any reason, or have you any basis for saying, that the eastern division does not extend to this point west of that depot, except by the measurement it is ascertained to be more than 95 miles? If yea, state what.

Ans. The resolution of the board of directors authorizing the
100 execution of the mortgage known as the Palmer mortgage, and the language used in said mortgage, together with the resolution of the board of directors separating the road into divisions, are the only reasons for saying this, aside from the result of the measurement.

Ques. Can you give that resolution?

Ans. Yes; a copy of it is hereto attached and marked Exhibit H H—that is, of the resolution authorizing the execution of the mortgage; and a copy of the resolutions separating the road into divisions are hereto attached and marked Exhibit I I.

Ques. When the St. Paul Company took possession, June 13, 1863, about what amount in value of wood was on and belonging to the eastern division?

Ans. I can't answer that now, but will examine and give the amount as near as I can. The wood is included in the answer I have already given as to supplies.

Ques. Since the St. Paul Company has had possession of the eastern division, has it been engaged in constructing west of Milwaukee, and has it passed over the eastern division its laborers and employees free of charge?

(Objected to by Mr. Cary.)

Ans. It has not passed laborers and employees engaged in construction. Such laborers and employees, sent by contractors, have been charged at the rate of two cents per mile, the same rate we charge other companies for transporting that class of men.

Ques. Since the St. Paul Company has been in possession as aforesaid, has it not transported over the eastern division its own iron, or iron for other railroad companies in which its officers and directors were interested, at less than the usual prices?

Ans. It has transported over the eastern division from 12,000 to 15,000 tons of iron rails, used in laying down the track from Portage City to Columbus, for which no charge was made or no compensation was paid, and it has transported about the same amount over the whole line from Milwaukee to La Crosse, for the Minnesota Railway Company, at the rate of $2 per ton of 2,000 pounds.

101 Ques. What would have been the advance charge for transporting that class of material from Milwaukee to Portage?

Ans. That would be a matter of bargain. The Chicago and Northwestern Railway Company transport the two thousand tons of rails aforesaid from Minnesota Junction to Chicago, and back, being 296 miles, at $2 50 per ton, and at that rate 90 c. per ton would be a corresponding price for transporting from Milwaukee to Portage. Such freight is almost always carried by special contract.

(Def'ts move to strike out this answer, as not responsive to the question.)

Ques. At the time this iron was transported, if it had been offered for transportation by a stranger, totally disconnected in business, present or prospective, what would have been a fair charge per ton for transporting it from Milwaukee to Portage City?

Ans. I should have charged $1 25 per ton, which I would consider a fair price, but would have taken it at 90c. per ton rather than not had it. The iron was transported at a time when we *we* were not pressed with western-bound freight. I think we transported iron for the Winona and St. Peter's and St. Paul and Pacific Railway Companies about the same time that a part of this was transported, charging $2 50 per ton from Milwaukee to La Crosse. We have transported for the Winona and St. Peter's railroad, during the summer past, at $3 per ton from Milwaukee to La Crosse.

Ques. What other materials or things have been transported by the St. Paul Company over the eastern division without charge, or below the ordinary charge, and what would have been a fair compensation or tariff therefor?

Ans. Thirty-six car-loads of cross ties—recollect of nothing else. A fair compensation would have been ten dollars a car-load.

The witness here produces the statement of mileage asked for before, and it is hereto attached and marked K K.

The witness in answer to the former question, that since June 13th, 1863, to January 1st, 1864, there has been received from the Horicon division, for freight business over the eastern division, 102 the sum of ($45,680 15) forty-five thousand six hundred and eighty dollars and fifteen cents.

Ques. What must be added to this amount to show what would have been received by the eastern division for this amount of business, under the rates prior to June 13th, 1863?

Ans. Two-fifths of this amount.

The respective parties stipulate and admit before the auditor that the following papers, printed, attached, and marked Exhibits L, M, N, O, and P, respectively, are copies of the first, or Palmer mortgage, so called; one of the city of Milwaukee mortgages, so called; the land grant mortgage, so called; the Bronson & Soutter mortgage, so called, being foreclosed by this suit; and the third or Barnes' mortgage, so called; and that all of them are true copies of said mortgages respectively. That the said Bronson, Soutter, and Knapp commenced suit to foreclose the mortgage to them in the district court of the United States for said district, on or about the 5th day of December, A. D. 1859, and that a copy of their bill of complaint is hereto attached and marked Exhibit Q; that a copy of the order in that suit, appointing receiver, is hereto attached and marked Exhibit R; that a copy of the order of reference therein is hereto attached and marked Exhibit S; that a copy of the report of the master therein is hereto attached and marked Exhibit T; that a copy of the said complainant's exceptions to the said master's report is hereto attached and marked Exhibit U; that a copy of the order of the court on said exceptions is hereto attached and marked Exhibit V; that a copy of the decree therein is hereto attached and marked Exhibit W;

that a copy of the master's report of sale therein is hereto attached and marked Exhibit X; that a copy of order of court therein, confirming said sale, is hereto attached and marked Exhibit Y; that a copy of the petition of the Milwaukee and St. Paul Railway Company and order of the court thereon is hereto attached and marked Exhibit No. 1; that a copy of a subsequent order therein is hereto attached and marked Exhibit No. 2.

It is understood, that should any mistakes of printing be discovered in any of these exhibits, they may be corrected at any time or stage of the proceedings hereafter.

103 Adjourned to 9 o'clock a. m. of the 9th inst.

SEPTEMBER 9th, 1864.

Parties present as before. Edwin H. Goodrich's examination continued.

Ques. How much has the Milwaukee & St. Paul Railway Company paid for repairs of the rolling stock on the road, except the forty box cars mentioned in the land grant decree, down to 1st of June, 1864?

Ans. I can't divide the forty box cars from any other repairs. The whole amount paid by that company for repairs is $

Ques. How much, according to your best judgment, has been expended to keep the forty box cars in repair from June 13th, 1863, to June 1st, 1864?

Ans. I have no opinion on that subject, and have no means of finding out from the books. We don't keep accounts with individual cars.

Ques. Can you not name a sum which, in your judgment, will be sure to cover the amount expended for that purpose, and approximate somewhat nearly to the true sum?

Ans. I can't name any sum that would approximate anywhere near the amount.

Ques. Calling those cars at cost price, $31,979 64, what per cent., in your opinion, upon that amount, would annually keep the cars in repair?

Ans. I can't tell what the percentage would be.

Ques. Do you say that you can form no opinion as to the percentage upon the value which it costs to keep the rolling stock in repair for a year on this road, which has been managed all the time by yourself?

Ans. I cannot form an opinion without an examination of the accounts, and a comparison of the amount expended with the value of the stock at different times.

Ques. Can you, and will you, and how soon will you make that examination and comparison, and answer as to the matter inquired of?

Ans. I think I can, but I don't think I will.

Ques. Are you still in the employ of the Milwaukee & St. Paul Railway Company?

104 Ans. I am.

Ques. Will you produce the account books of the Milwaukee & St. Paul Railway Company, showing the expenditures by it for repairs to rolling stock?

Ans. I will not. I have in a previous answer stated that I would give a statement of the amount of the expenditures by this company for repairs.

Ques. Are you still in the employment of Hans Crocker, receiver in this cause?

Ans. I am managing the eastern division of the road for Hans Crocker.

Ques. Is Hans Crocker in the actual operation and the control and management of the eastern division at the present time?

Ans. He is.

Ques. How long since he has been?

Ans. Since the order of court putting him in possession. I don't know what the date is.

Ques. Will you present the books kept by him as such receiver, since he took the actual management and control of the eastern division, showing the revenues received and sums disbursed by him?

Ans. I will not. I refer you to him for his books and papers.

Mr. Brown, for the receiver, here offers any and all books in his possession, and the defendants here request to see particularly the books kept by the receiver, showing his receipts and disbursements as such, since the 28th day of April, 1864. And the defendants here requests the auditor to return the same with his report, or copies thereof examined by him; and the defendants further request the auditor to return to the court with his report, all the books, papers, and vouchers relied upon by the receiver as evidence of disbursements by him, or such examined copies thereof.

The St. Paul Railway Company, through its president, here offer to produce the books of the St. Paul Railway Company, together with all the books in their possession relating to the operation of the eastern division by the receiver, since the last day of April,
105 1864, for the examination of the auditor and the parties interested, so far as they relate to this accounting, and they further offer to furnish any statements or data from said books that may be desired, either by the auditor or any of the parties interested in this accounting, on being requested so to do; but they decline to have said books taken out of their possession or returned into court with the papers in this cause.

And thereupon the defendants request a copy of all the books kept by anybody as to the operation of the eastern division, showing receipts, disbursements, and repair of rolling stock from April 28th, 1864, to June 1st, 1864.

Ques. Can you not, and if you can, will you see from the books how much has been expended for repairing all the box cars on the road, and see what proportion of that would belong to forty box cars, upon the basis that the expenditures have been alike to all the box cars?

Ans. I have before testified that I would produce a statement showing repairs of rolling stock, and such statement will show the cost of repairs of locomotives, and cost of repairs of cars. I decline to work out the mathematical problem, any other person being as capable of doing so as myself.

Ques. What amount by cost price of rolling stock was on the road on the 11th day of June, 1860?

Ans. The books of the La Crosse and Milwaukee Railroad Company show a balance charged to rolling stock account on the 1st day of July, 1858, of $544,492 16, since which time no items are charged on that account.

Cross-examined by James S. Brown for receiver:

I have acted as superintendent of this road under various parties since the fall of 1856. Mr. Chamberlain was in possession from September, 1857, until about June 1st, 1860. He surrendered the possession to the trustees under the second mortgage. The receiver took possession of the road on the 11th of June, 1860. He took possession of the whole road, both divisions. He remained in possession of the whole road, without any change until the order of the court was made, June 12th, 1863. He then surrendered possession of the road to the Milwaukee and St. Paul Railway Company. During that period and while he was in possession he managed and operated the road as an entire road, keeping an account of the earnings on the parts known as the eastern and western division. The management and operation of the road was in the ordinary mode in which other railroads are operated, as I understand other roads to be operated, having employees in the same manner as other roads, but not so large a number of office employees. It was necessary for him to have book-keepers, treasurers, and other officers and employees, in order to carry on the road. It was utterly impossible for any one to attend to all these different duties.

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Ques. Were the officers and employees men of the proper knowledge, and for the positions which they severally held, and also men of integrity?

Ans. I considered them such.

Ques. Were the books and accounts kept in the ordinary and proper manner in which such books and accounts were kept?

Ans. Yes, except that they were not kept as much in detail as some companies keep them.

Ques. To what extent did the receiver give his personal time and superintendence to the affairs of the road?

Ans. From six to ten hours a day. He was at his office from four to eight hours a day when in the city. I don't know what he was doing when away from the office.

Ques. Was it to an extent to exclude any other regular business?

Ans. It was.

Ques. Did he, and to what extent, take a general supervision of the various matters connected with the road?

Ans. He did take such general supervision, and acted in what I would suppose to be the duties of a president of a corporation.

Ques. Are those duties generally separate and distinct from those performed by the other officers you have mentioned, and are they usually performed by one person, only distinct from the duties of such other offices?

Ans. They are; he having general charge of all the affairs of the company and of all subordinate officers.

Ques. Did he surrender to the St. Paul Company, at the date you have mentioned, and under the order of the court mentioned
107 by you, the whole of the rolling stock that was on the road?

Ans. Yes.

Ques. Did he, as a fact, after that and until the 1st of May, 1864, have the management of the road, its earnings, expenses, or books?

Ans. No.

Ques. Had he any other data for making his reports than those furnished by the St. Paul Company, and could he in any other way receive the earnings of the road than as they rendered their account and paid over the earnings to him?

Ans. No.

Ques. When the order was made, April 28th, 1864, for the surrender by the company of the road to the receiver, what part of the rolling stock did the company retain under a claim that it was their own, and what part did they surrender to the receiver?

Ans They retained a large proportion of the rolling stock, as stated by me in detail in my examination in chief.

Ques. Was it possible for the receiver, with the rolling stock surrendered to him, to operate the road so as to pay running expenses?

Ans. No.

Ques. Did an arrangement with the company, by which the two divisions were in some way to be operated together, become necessary in order to prevent the entire loss of all net earnings on the eastern division?

(Objected to by def'ts.)

Ans. Such an arrangement was made, and was deemed necessary for the purpose of operating the eastern division.

Ques. Was that arrangement a fair and advantageous one, and was it the best he could make with the company?

(Objected to, that he should state what the arrangement was and not his opinion of it. Overruled; def'ts except.)

Ans. It was considered so, and was the best one that could be made.

Ques. Will you state the arrangement as near as you can?

Ans The arrangement was not in writing, and was con-
108 sidered a temporary one, and was as follows: The road was to continue to be operated as an entire line from Milwaukee to La Crosse; the Milwaukee and St. Paul Railway Company undertaking to furnish sufficient rolling stock in addition to that delivered to the receiver to do all the business belonging to the road; an account of the earnings of the eastern division was to be kept, also an account of all the expenses on said division, the St. Paul Company charging fair compensation for the use of their rolling stock while employed on that division.

Ques. How were the general expenses of the management of the road to be divided?

Ans. They were to be pro rated mile for mile with all the roads of the Milwaukee and St. Paul Company, or as 95 miles would be to 324.

Ques. Will you state what you mean by general expenses?

Ans. The expenses of superintendence, general freight and ticket agent, and all other agents and clerks employed in and about the general offices of the company serving and doing business for the entire line of road.

Ques. State whether or not there was a saving to the eastern division by such arrangement over maintaining and paying for its separate management; and if so, what percentage?

Ans. There was a saving; can't state percentage.

Ques. Would not the same number of superintendents, book-keepers, and officers generally connected with the management of the road be necessary for the eastern division separately as are required for the two divisions together?

Ans. No, there would not. The eastern division operated alone would require a superintendent who would do nothing else; a cashier also. But the other officers would be less in number.

Ques. What was the condition and repair of the road between Milwaukee and La Crosse when the receiver took possession?

Ans. It was not in good condition, particularly the eastern division. The western division was in better, because it had not been used so long. The repairs were made under my general superintend-
109 ence; and the repairs that have been made were necessary for the proper operation of the road.

Ques. Has the receiver ever been in possession of the Higbee warehouse?

Ans. No.

Ques. Was Higby in possession of that warehouse at the time the receiver took possession of the road?

Ans. Yes.

Ques. Who built it?

Ans. I don't know, except as to that portion built since Higbee came upon the premises. As it now stands, the whole of it has been rebuilt by Higby, because he tore down the old one, known as the Comstock warehouse, that being unfit for use.

(The witness here produces a paper which he says is an abstract from the books of the St. Paul Company of the operations of the eastern division for the month of May, 1864, in response to the request of the defendant above made, to furnish the same from April 28th, 1864, to June 1st, 1864, as being the nearest abstract that can be got at between those two dates, and which is hereto annexed and marked Exhibit L L.)

Adjourned to 2 o'clock p. m.

SEPTEMBER 8TH, 1864—2 o'clock p. m.

Cross-examination of Edwin H. Goodrich by Mr. Brown on behalf of the receiver, continued.

Ques. Under the arrangement alluded to, were the officers who acted as cashier, book-keeper and superintendent, employed as well by the receiver as the St. Paul Company?

(Objected to by def'ts. Overruled. Def'ts except.)

Ans. There was no change of employment at the time of change of possession May 1st, 1864; the same officers continued to perform the same duties as they had previously done, and in making up the account of expenses, a proportion of the expenses of such officers, agents and superintendents, was charged to the eastern division in the ratio as stated heretofore.

Ques. Did the St. Paul Company, when taking possession of the road, under the orders heretofore alluded to, make any and what change from the employees who had before been appointed by the receiver?

Ans. They made no change in the employees, or rather they continued in employment all the men employed by the receiver,
110 but not in all cases in the same capacity as employed by him, and they brought new men into service. They brought a vice-president here, a superintendent, treasurer, and a fiscal agent.

Ques. Did the vice-president and superintendent cease their connexion with the road before the new arrangement on 1st of May, 1864, with receiver?

Ans. Yes, and the fiscal agent has since resigned.

Ques. Were the supplies that belonged to the road surrendered with the rolling stock to the St. Paul Company under the order of the court, allowing that company to take charge of the road heretofore alluded to?

Ans. All the supplies on hand at the time the receiver surrendered the road to that company were taken charge of by said company.

Ques. From the time that the receiver took possession, up to the time of his surrender to the St. Paul Company, did parties representing the complainants in the second mortgage, and the Milwaukee and Minnesota Railroad Company, from time to time look at the books of the receiver, and were any complaints ever made by them, or either of them, as to the manner in which those books were kept?

(Objected to by defendants as immaterial. Overruled, and they except.)

Ans. The parties representing complainants in 2d mortgage did look frequently at the books, but I never knew of their making any complaints as to the manner in which they were kept; I don't know that the Milwaukee and Minnesota Railroad Company or any of its representatives ever did look at the receiver's books.

Ques. Were any new buildings erected while the receiver was in possession not absolutely demanded by the necessities of the road, or any repairs upon old buildings made, which, in the proper running of the road, might be avoided?

Ans. Not to my recollection or knowledge; they were all made under my general supervision.

Re-direct by Mr. Carpenter:

Ques. What salary does the St. Paul Company pay its president the present year?

111 (Objected to as immaterial. Objection sustained, and exception by Mr. Carpenter.)

Mr. Carpenter offers to show that the said St. Paul Company pays

the president of said company for his services two thousand dollars per annum; that the Milwaukee and Prairie du Chien, having about the same length of road, receipts and disbursements, pays its president for his services per annum $4.000.

(Objected to, and objection sustained and defendant excepts.)

Ques. Has the receiver, or any person in his employ, to your knowledge, been directly or indirectly interested in the receipts of the Higby warehouse since June 11th, 1860?

(Objected to by Mr. Brown as immaterial, except so far as the receiver is concerned. Objected to by Mr. Cary as immaterial, and that it is not cross-examination. Overruled and exception.)

Ans. I do not know that the receiver or any person in his employ has been directly or indirectly interested in the receipts of the Higby warehouse since June 11, 1860.

Ques. In the arrangement made between the receiver and the St. Paul Company, about May 1, 1864, was any arrangement made about dividing through freight between the eastern and western divisions?

Ans. No arrangement was made different from that which has always been in existence.

Ques. Do you, as a railroad man, know any more just or equitable basis for dividings the earning of the whole road between the eastern and western divisions than that which has been acted upon, and is set forth in detail in the testimony of the receiver before the auditor?

Ans. I don't know of any more just or equitable manner of making a division, under the circumstances, than that was made, exclusive of all question as to compensation for rolling stock between the divisions, respectively.

Cross-examination of Edwin H. Goodrich, by John W. Cary:

Ques. Does the $125,090 of supplies mentioned by you include all the supplies in the hands of the receiver at the time of the
112 surrender to the St. Paul Company, on the 12th of June, 1863?

Ans. My impression is it does not, but I am unable to answer that question without reference to a book which I have searched for within the past two hours, but have not yet been able to find; the question is susceptible of a positive answer when I can get that book, and in the mean time I decline giving an opinion as to the matter inquired about.

Ques. Since the 12th day of June, 1863, who has made the repairs on rolling stock?

Ans. The Milwaukee and St. Paul Railway Company.

Ques. Has any, and if any, what part of those repairs been charged to the eastern division?

Ans. There has been no part charged to the eastern division, or to the receiver, except on such proportion of locomotives and other rolling stock as was understood to belong to the eastern division. Reference is made to my former answer, setting forth the proportions in which it is claimed the rolling stock is owned.

Ques. In item No. 7 of Exhibit E, the sum of $6,978 03 is charged for repairs of tools, &c.; does that include the whole amount expend-

ed for the repair of all the tools in the shop at Milwaukee, or only a proportionate part; and if so, what portion?

Ans. I cannot answer that without reference to the voucher's distribution book. On reference to the distribution books, I find that the item named above is the amount charged for repairs of all the tools in the shop at Milwaukee.

Ques. If rent is to be paid for the use of the repair shop and tools at Milwaukee since June 12th, 1863, should a proportion be charged the receiver or eastern division; and if so, what proportion?

Ans. The same proportion should be charged to the receiver or eastern division, as the proportion of rolling stock owned by that division bears to the whole rolling stock on the road.

Ques. Can you furnish a statement which will show the earnings of the eastern and western divisions from June 11th, 1860, to January 13th, 1862, upon the basis heretofore named, deducting therefrom the operating expenses and all money paid for right of way,
113 renewals of track, fencing and buildings, and also deducting from the earnings of the eastern division the amount of interest paid on the Palmer mortgage and the city mortgages, including the amount paid to the sinking fund on the Palmer mortgage?

Ans. I think I can, and will undertake to do so as soon as the clerks can compile it.

Ques. You have stated the percentage of rolling stock used on the road and the percentage of that used on the western division. What was the percentage of it used on the eastern division during the same period of time?

Ans. The balance of the rolling stock that was used, except what I have guessed was used on the western division, was used on the eastern division.

Ques. You have stated that an arrangement was made for rolling 2,000 tons of iron rails for the eastern division. Was it necessary that such amount should have been rolled and relaid, in order that said division might be properly and safely operated as a railroad?

Ans. It was if all the through business of the road is to be carried over the eastern division. Should the through business of the road go by way of Columbus and Watertown, the necessity for laying of new rail would not be so great.

Ques. About how much of that 2,000 tons has been re-rolled?

Ans. About 1,000 tons.

Ques. Was that amount necessary to be relaid in any event?

Ans. It was.

Ques. State whether the new buildings erected on the eastern division, while in possession of the St. Paul Railway Company, were necessary for the proper, successful, and economical operation of the road.

Ans. They were.

Ques. Has any work been done or improvements made on the eastern division while in the possession of the St. Paul Railway Company, which were not demanded by the best interests of said division, and necessary to the proper operation of it as a railroad?

Ans. There has not to my knowledge.

114 Ques. You have stated that 42 tons of iron, rolled under the arrangement made for rolling iron on the eastern division, were taken by the St. Paul Company and laid down on their road. By whom was it paid for, and is it charged in the account against said eastern division? State fully in regard to it.

Ans. It was paid for by the Milwaukee and St. Paul Railway Company, and is not charged in any account against the eastern division; but it is charged to the account of renewal of track on the western division.

Ques. You have answered that in item 28, of Exhibit E, there is a certain amount charged for rebuilding the depot at Portage City, and you have also stated that said depot, as you understand it, is on the western division. Give the amount so charged in item 28 of Exhibit E, and explain how it happened to be charged in that manner.

Ans. The amount charged for building the depot at Portage City was expended on a building to replace one destroyed by fire, and the amount was charged against the eastern division, on the supposition that the Portage City station was within the limit of 95 miles from the commencement of the track in Milwaukee. The amount so charged, as was stated, was between three and five thousand dollars.

Ques. Have the repairs on rolling stock since June 12th, 1863, except that proportion of the rolling stock purchased by the receiver, which is admitted to belong to the eastern division, been paid for by the Milwaukee and St. Paul Railway Company, and what amount has been so paid since June 12th, 1863?

Ans. The repairs on rolling stock since June 12th, 1863, have been paid for by the Milwaukee and St. Paul Railway Company; and the repairs, on the proportion understood to belong to the eastern division, has been charged to that division. The whole amount of repairs of rolling stock is $174,967 63-100, of which $25,126 97-100 has been charged to the eastern division.

Ques. Who purchased the rolling stock which the receiver took possession of on the 11th day of June, 1860, for what was

115 it procured, and when and where was it used, up to that time?

Ans. Almost the entire quantity was purchased by the La Crosse and Milwaukee Railroad Company, to be used upon the road in the prosecution of its transportation business, and it was used for that purpose on the company's railroad between Milwaukee and La Crosse.

Ques. Was there ever any division of said rolling stock as between or as belonging to either division of said road as distinguished from the other?

Ans. Not to my knowledge. There never was.

Ques. What percentage of the rate between Horicon and Milwaukee was paid on the La Crosse and Milwaukee Railroad Company to the Horicon railroad as a compensation for furnishing the La Crosse Company with the Horicon road business, under the contract between the two companies?

Ans. About 30 per cent. up to the time of the expiration of the first period of the contract.

Ques. What was the occasion of altering it?

Ans. At the expiration of the first period of the contract, Lindsay Ward, the receiver of the Milwaukee and Horicon Railroad Company, would not consent to continue the business upon the basis upon which it had been done previously, and changes were made from time to time, until the basis of division finally agreed upon was an equal division of all way-bills representing the freight business on the road—he claiming that a much greater proportion should be allowed to him than that.

Ques. Why was the rate changed when the St. Paul Company took possession?

Ans. When the St. Paul Company took possession of the Horicon division they refused to furnish the business of that division to the eastern division, unless a greater proportion than one-half of the through rate was allowed to them, and insisted upon having seventy-five per cent. of such rate, but the matter was finally settled by the receiver consenting to accept of thirty per cent. of the through rate as the proportion to be paid to the eastern division.

Adjourned to September 10, 1864, at 9 a. m.

116 SEPTEMBER 10, 1864.

Cross-examination of Edwin H. Goodrich by Mr. Cary continued.

The witness here produced a statement showing the repairs of rolling stock from June 13th, 1863, to June 1st, 1864, called for by the defendants, and which is hereto annexed and marked Exhibit M M.

Ques. On and after the 13th of June, 1863, were the Milwaukee and St. Paul Company the owners and in possession of a line of railroad from Watertown to Milwaukee which they were operating?

Ans. They were.

Ques. Was that line of road connected with the Horicon road by a railroad, and if so, by what road?

Ans. It was connected with the Horicon railroad by the Chicago and Northwestern railway. The distance from Watertown to the Junction on the Horicon railway is about 22 miles.

Ques. Had the Milwaukee and St. Paul Railway Company running connexions and business arrangements with the Chicago and Northwestern Railway Company, and could they have done the business of the Horicon road on that road, and said Watertown road, and if so, how much would the distance be increased thereby from the Horicon road to Milwaukee?

(Objected to and objection overruled, and exception taken.)

Ans. The business of the Horicon road could have been done on the Northwestern and Watertown roads; the distance would have been increased about 11 miles.

Ques. Did the receiver make the bargain himself in regard to doing the business of the Horicon road, on the eastern division, with the Milwaukee and St. Paul Railway Company, and did he obtain the best price which he was able to get from them for that business?

Ans. The receiver did make the bargain, and obtained the best possible price he could.

Ques. Was there ever a time after the 11th of June, 1860, up to the 12th of June, 1863, when the Horicon road could have transacted its business over the Northwestern and Watertown roads; and if not, why?

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Ans. There was no time during that period they could have done so without a violation of contract between the Chicago and Northwestern and La Crosse and Milwaukee roads; the Chicago and Northwestern Railway Company having agreed that they would not do the business of the Horicon road, by way of Watertown and Milwaukee, being part of the consideration of mutual agreement between the two companies. There is no other way except those two of connecting the Horicon road with Milwaukee.

Ques. You have said on your direct examination that you estimated that the Milwaukee and St. Paul Company took possession of about $125,000 worth of supplies on the 12th of June, 1863, in and about the workshops on the eastern division. Have you since examined the inventory of supplies on hand at that time, and do you not find that answer correct? and if not, state the amount and situation of supplies then on hand.

Ans. I have since examined the inventory, and find my estimate erroneous. I now propose to submit a statement showing the amount of supplies on hand at that time, which will show the amount in value of supplies and materials in and about the workshops and on the eastern division on the 12th of June, 1863.

Ques. Were the supplies for the whole road purchased by the receiver, which were to be used in repair of rolling stock, left at the workshops in Milwaukee during the time the receiver was in possession, and was such the case on the 12th of June, 1863?

Ans. The supplies on the whole road were purchased by the receiver, and were taken to the workshops in Milwaukee, with trifling exceptions, and such continued to be the case during his administration, and that was the situation on the 12th of June, 1863.

Ques. State the manner in which the supplies were charged to the several divisions, or the manner in which the accounts of them were kept during the administration of the receiver?

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Ans. When supplies were purchased, they were usually purchased for some specific object; for instance, locomotive tire was purchased for locomotive repairs, and at the time of such purchase was charged to locomotive repairs, whether used at that or any future time. Materials for car repairs were purchased and charged in same manner.

Ques. On the 13th of June, 1863, had all the supplies on hand been charged and entered into the account for operating expenses, repairs, or other accounts; and if not, what proportion thereof had been?

Ans. Our custom was as stated above, and I have no doubt the whole amount on hand at that time had been so charged, except some unimportant items which might have been overlooked.

Ques. You state that about 1,200 tons of iron and 63 car-loads of

cross-ties have been transported from Milwaukee to Portage City for the St. Paul Company, for which no charge had been made. State how that happened, and why it was.

(Objected to as irrelevant by def'ts. Overruled and they except.)

Ans. Such transportation is usually done under special contract. I was ordered by the president of the company to forward the iron loaded upon the docks at the station to Portage City, but had no instructions as to what rates to charge on the same, when purchase of cross-ties and deliveries were made upon the docks at this station. I forwarded these in the same way, leaving the price to be adjusted hereafter. This is the only explanation I can give.

Ques. Was any and what proportion of the rolling stock on hand when the receiver took possession, purchased and paid for by the stock of the La Crosse and Milwaukee Railroad Company?

(Objected to as immaterial, and because the right of the St. Paul Company to rolling stock is fixed by the decree in the land grant cause, under which it claims as a purchaser. Overruled and defendants except.)

Ans. A considerable part thereof was so purchased. Can't state how much, but will undertake to furnish a statement from the books of the company. The balance was paid for, some in cash, some in farm mortgage bonds.

Ques. Explain fully what disposition was made of the gold
119 which has been received by the receiver during his administration.

Ans. So much of it as was required to be used in carrying on the business of the road was so used; the balance was sold at the highest rate of premium at the time of sale; the premium so received was entered to the credit of exchange and commission, or a similar account.

Ques. Where two independent roads are in connection, is it customary for the road receiving the larger amount of tonnage to allow a drawback to the other on the tonnage so received?

Ans. Where the earnings go into a common fund, so far as I know, it is.

Ques. Has the western division since the 11th day of June, 1860, furnished to the eastern division a larger amount of tonnage than it has received from the eastern division; and if so, how much more?

Ans. My impression is that the western division has furnished the largest amount of tonnage. Can't state the amount, but it can be ascertained by compilation of statistics in the office. I will furnish it.

Ques. What amount of drawback is usually allowed in such cases?

Ans. I don't know.

Ques. State any additional fact or knowledge that you may have touching the western termination of the eastern division, in regard to the point of junction between the two roads.

(Question withdrawn.)

Ques. At what point on the line of the La Crosse & Milwaukee road did the land grant road commence, as fixed by the company, for the purpose of claiming lands under the land grant?

Ans. At the point of junction with the Portage division; the grant being from Madison, by the way of Portage City, to the St. Croix river or lake, &c.

Ques. Was that point definitely fixed by the company?

Ans. It was, and plats were filed with the secretary of state in the fall of 1856 or spring of 1857

120 Edwin H. Goodrich re-examined by Mr. Carpenter, for defendants:

Ques. What books of record belonging to the old La Crosse Company are in the receiver's custody?

Ans. The books of record of the board of directors, the book of record of the executive committee, the book of record of contracts, and books of records of descriptions of lands; these are the only books of record I know of.

Ques. Who has the maps, profile and *filed* notes, kept during the construction of the eastern division?

Ans. All that I know of are in the engineer's office in this building.

Ques. Can you furnish us a statement or inventory of all the rolling stock on the road January 1st, 1864?

Ans. That is contained in Exhibit M M. I can furnish a statement of the numbers of locomotives and cars.

Ques. In the statement which is marked Exhibit C, before the auditor, do the statements "mileage east division" and "mileage west division," contain the mileage of all the rolling stock, or only of the locomotives?

Ans. It contains the mileage of trains and of those trains made up of engines and cars. It shows the mileage of trains, whether it contains one car or twenty cars.

Ques. During the year, can you furnish any opinion or average of the number of passenger cars run with each passenger train, from Milwaukee to La Crosse?

Ans. The average on the whole line would be three passenger cars, one baggage car, and on one train a day each way one mail and express car.

Ques. What do you think would be the average number of freight cars on a train?

Ans. The freight trains vary from five to twenty cars I cannot give the average number of all the trains.

Ques. What was the amount of old iron which was re-rolled into the 42 tons, relaid upon the western division, worth per ton?

Ans. $70 to $75 per ton.

121 Ques. Was any and how much iron loaned or otherwise disposed of to the iron company at Iron Ridge?

Ans. Old iron was furnished to lay down track from near the Iron Ridge station to the iron mine, being about one mile in distance.

Ques. About how many tons, and what was it worth per ton?

(Objected to as immaterial. Overruled and exception.)

Ans. From 90 to 100 tons, worth from $70 to $75 per ton.

Ques. Do you know of any other dispositions or loans of iron or

other supplies or property pertaining to the road? If so, state the same fully.

Ans. The Milwaukee & Minnesota Railroad Company, at one time, through its president or vice-president, assumed to loan to Kellogg & Strong, at one time, a quantity of old rail, to extend to the track of the Milwaukee, Chicago & Green Bay railroad to the elevator of said Kellogg & Strong, and the party in possession of the Milwaukee & La Crosse railroad at that time allowed the iron to be used for that purpose. I think the road was at that time in the possession of Selah Chamberlain. I can't tell how many tons. I never knew.

Ques. To what division did the iron loaned to the Iron Ridge Company belong?

Ans. It was taken out of the track at points between Germantown and Horicon, on the eastern division.

Ques. About what date was the iron loaned to the Iron Ridge Company?

Ans. I think it was laid down in the months of July and August, 1864.

Re-cross-examination by Mr. Cary:

Ques. To whom did the old iron belong, out of which the 42 tons of iron was rolled, which has been laid down upon the St. Paul Company's road?

Ans. It belonged to the St. Paul Company. As the eastern division is at this time indebted to that company on account of old iron, I will furnish a statement of the old iron account.

Ques. Who loaned the iron to the Iron Ridge Iron Company, for what time was it loaned them, and on what consideration?

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Ans. The contract with the Swedes' Iron Company will explain itself. The Swedes' Iron company is the company at Iron Ridge, referred to above.

Re-cross-examined by Mr. Brown:

Ques. Does the eastern division derive benefit from the loan of this iron?

Ans. It has the whole business of transporting iron over and between the Iron Ridge station and Milwaukee, the business of transporting material and supplies for the erection of furnaces at Iron Ridge, and the business of transporting the iron manufactured at those furnaces, shipped to Milwaukee. The amount received for the transportation of iron ore during the month of August, 1864, was $2,801 25.

The witness explains his answer as to the amount of coin received by the receiver, as follows: "In my answer to the question as to the amount of coin received, I had reference to the amount received for passage money, and not to drafts on the Treasury Department, received for the transportation of mails."

The paper hereto annexed, and marked Exhibit S S, is a statement of the old iron account between the eastern and western divisions. The paper hereto annexed, and marked Exhibit T T, is a

copy of the contract with the Swedes' Iron Company, referred to in my previous testimony. The paper hereto annexed, and marked Exhibit U U, is a statement showing the manner of payments for rolling stock, by the Milwaukee & La Crosse Railroad Company, referred to in my previous testimony. The paper hereto annexed, and marked Exhibit V V, is a statement of the earnings of the eastern division from August 20th, 1864, to August 31st, 1864, and from September 1st to September 10th, 1864, referred to in my previous testimony.

EDWIN H. GOODRICH.

123 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

The testimony of D. W. Keyes, a witness produced, sworn, and examined before H. L. Palmer, auditor, appointed by order of the court to report upon the account of Hans Crocker, receiver, and the exceptions thereto.

Dwight W. Keyes sworn:

Ques. Are you in the employment of the Milwaukee and St. Paul Railway Company; if so, in what capacity?

Ans. I am, and keep the general books of that company.

Ques. Look at statement Exhibit E, before the auditor, item No. 38, and state of what items that charge is composed.

Ans. It is made up of the following:

Paid Crocker, receiver, April 23, 1864	$68,285 50
Charge for the earnings of the western division from June 1 to June 12, inclusive	20,761 17
Mileage on the western division from April 25 to May 1, 1863, inclusive	2,396 48
Same from May 1 to June 1, 1863	11,958 02
Same from June 1 to June 12, 1863	4,672 79
Advance charges on goods in transit, June 13, 1863	1,886 86
Total	109,950 82

Ques. Can you furnish the auditor a statement of the receipts and disbursements for the months of April and May, 1863?

Ans. Yes, sir.

Ques. Can you make a statement of items comprising the charge $41,675 22 in the receiver's report mentioned, and also the item of twenty-nine thousand and odd dollars?

Ans. I can.

Adjourned to 2 o'clock p. m.

124 AUGUST 23, 1863.

D. W. Keyes continued :

The item mentioned in the last preceding question is an entry of $29,157 45, is made up of the following :

Net earnings of the western division from April 25 to April 30, 1863, both inclusive	$4,608 58
Net earnings of western division from May 1 to May 31, 1863, both inclusive	24,548 87

This is net earnings without any charge for the use of rolling stock. Exhibit G is a copy of the voucher taken by the receiver therefor.

Ques. Can you furnish a statement of the receipts and disbursements for the months of April and May, 1864 ?

Ans. Yes ; I have them here. Exhibit H is a statement of the receipts and disbursements of the eastern division for the month of April, 1864, and the paper now produced and marked Exhibit I is a similar statement of the receipts and disbursements of the eastern division for the month of May, 1864.

DWIGHT W. KEYES.

Adjourned to the 25th of August, 10 a. m.

AUGUST 25th—10 a. m.

Parties present as before.

Mr. Brown moves, on behalf of the receiver, that all testimony as to the relative rights of parties to the suit, and others, to the earnings of the road, be excluded; and that the investigation by the auditor be hereafter limited to ascertaining the correctness or incorrectness of the accounts of the receiver, as rendered up to June 1st, 1864.

Mr. Cary, on behalf of the complainant in this case, moves to exclude all testimony relating to the relative rights of the eastern and western division of the road, in the fund arising from the appointment of the road since the appointment of the receiver ; also all testimony relating to moneys which the receiver might or ought to have had, in his hands which is not now, or has not been in his hands, and that the investigation be confined to ascertaining
125 the actual amount of money now in his hands, subject to the order of the court, which may be applicable to the payment of interest on the mortgage in this suit.

Argued by Mr. Brown and Mr. Cary for motion, and Mr. Carpenter opposed.

Motion overruled and exception taken by Messrs. Brown and Cary.

Adjourned to Sept. 2, at 10 a. m.

SEPTEMBER 2, 1864, at 10 a. m.

Parties present.

On motion, made in behalf of the Milwaukee and Minnesota Railroad Company, and by reason of the absence of Messrs. Carpenter and Cary, and Mr. Brown, on behalf of the receiver, objecting thereto,

Adjourned to Sept. 3, 1864, at 10 a. m.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

Examination of witness taken in pursuance and by virtue of an order of reference in this cause of the 28th of April, 1864, August 8th, 1864.

Present: H. L. Palmer, John W. Cary, for complainant and the Milwaukee and St. Paul Railway Company, James Brown, of counsel for receiver, and M. H. Carpenter, of counsel for the Milwaukee and Minnesota Railroad Company, and Alexander Fleming.

The testimony of Hans Crocker, a witness produced, sworn, and examined before H. L. Palmer, auditor, appointed by order of the court to report upon the account of Hans Crocker, receiver, and the exceptions thereto.

Hans Crocker, being produced and duly sworn and examined, testified as follows:

126 The books now produced, viz., ledgers A and B, journals A, B, and C, cash-books, operating expenses. Books A and B contain my accounts as receiver. They are all the books I have, except the vouchers containing general accounts. Have other books, such as warrant books, but these contain all the accounts of receipts and expenditures.

Ques. To the best of your knowledge and belief, do they contain just, full, and correct accounts of your receipts and disbursements as receiver?

Ans. They do.

Ques. Are these two basketsful of papers your vouchers? are they correct and true vouchers for disbursements on your part?

Ans. Yes, sir.

Ques. Were the accounts filed by you in this cause correct, true, and just accounts of your receipts and disbursements as receiver?

Ans. I think they were; they were intended to be.

The receiver now offers the vouchers above referred to, and submits to such course in regard to opening, reading, and exhibiting as shall be prescribed by the auditor.

Cross-examined by Mr. Carpenter:

I took possession on the 11th of June, 1860, of the road. I was not appointed receiver in this cause until July term, 1860; I was first appointed in the Howard case.

Ques. What part of the duty, as receiver, have you personally performed, or have you actual personal knowledge of?

Ans. I have been in the office here, and have had general charge of the business. The various branches of the business have been performed by parties having charge of these branches.

Ques. What agents or employees have you had—that is, what class of agents, and what have been their respective duties?

Ans. Edward H. Goodrich has been general manager, and had charge of operating the road: Mr. A. G. Miller, W. L. Hinsdale, and

D. W. Keyes, have been cashiers. The duties of cashiers were receiving and paying out moneys. A general book-keeper was E. C. Jennings, whose duty it was to keep the books; J. M. Kimball has been general ticket agent, whose duty was to perform the gen-
127 eral duties of that office, and keep an account of the sale of tickets on this and other roads; had a general freight agent, having a similar charge of the freight department; also a paymaster. Mr. Keyes was first the paymaster; afterwards H. R. Hatmaker, whose duty was to pay off the men employees. William R. Sill, for part of the time, has had charge of repairs on the road; D. J. Whittemore has acted a part of the time as engineer; C. L. Rice has been master of repairs to locomotives; W. E. Kittridge has been master of repairs and construction of cars; S. H. Bailey has been roadmaster, eastern division; G. H. Daniel has been roadmaster, western division; William P. Cosgrove, telegraph operator; Walter E. Kittridge has been trainmaster a part of the time; L. Everingham has been local freight agent. Eastern agents—George F———, Boston; J. B. Worstell, N. Y.; W. W. Wilson, travelling agent; F. ———, advertising agent; conductors, engineers, mechanics, station agents, laborers, and clerks in the different offices.

Ques. What has been the duty to which you have given your attention personally?

Ans. I have made contracts, settled matters of right of way, made payments, advised Mr. Goodrich from time to time about the management of the road; nothing else.

Ques. Have you personal knowledge of the correctness of, and which, and how many, of the accounts and vouchers here offered by you?

Ans. Some of them I know to be correct; of others, I have only the knowledge derived from the general mode of ascertaining.

Ques. Have you ever kept, or can you make out, an account of your receipts and disbursements as receiver in this cause, of the eastern division?

Ans. I can do it by an arbitrary rule of my own; there is an account kept on that basis.

Ques. What is that basis?

Ans. In answer to that, I quote from my report for 1862, page 4, as follows: "In the tables accompanying the manager's report will be found the division of earnings between the eastern and
128 western divisions of the road. In the absence of any agreement between the parties representing these two interests, as to the division of earnings and expenses, I have followed the method which existed when I took possession of the road, although the receipts are divided by allowing 105 parts to the western and 95 parts to the eastern division. All business commencing and terminating on any division is credited to that division. All other business is divided *pro rata* per mile. The expenses are divided into local mileage and extraordinary; local is referring to the division on which they accrue, embracing machinery, buildings, renewal of track, &c.; the mileage expenses embrace locomotive and car repairs, locomotive and train

services, fuel, oil, stationery, passengers, agencies, &c.; the extraordinary expenditures are fencing, right of way, real estate, incumbrances, rolling stock, &c. This may not be the proper mode of arriving at the earnings and expenses applicable to the two divisions, but in the absence of any agreed basis I know of no other one I could have adopted." In my annual report of January 1st, 1861, I remarked, "It is not for me to determine the proportion of net earnings belonging to each division. That must be determined by the court, or by the agreement of parties who may hereafter become the owners of the two divisions of the road."

Ques. By this account upon this basis, what amount in all have you received belonging to the eastern division, gross receipts, from June 11, 1860, to June 1st, 1864? Specify, if you can, the amount received in each month.

(Objected to, because it has already been shown that the receiver took possession of the entire road under an appointment in the Howard case, and that the additional appointment in this case did not change his duties as to the mode of keeping his accounts, nor authorize him to adjudicate upon the conflicting rights of the parties interested in the receipts of the road. Overruled and exception.)

Ans. My accounts are filed for the entire road, and to make that distribution and division will require some time to collect it.

Ques. What time will enable you to present before the auditor such accounts of gross receipts upon the basis named, showing the services from which you received the money?

129 Ans. It will take about ten days to make it.

Ques. Will you prepare and present to the auditor such account?

(Objected to by Mr. Brown.)

Ans. I will have Mr. Keifer do it as soon as possible.

Adjourned to Monday, 15th, 10 a. m.

AUGUST 15, 1864.

Parties present as before.

Adjourned to Thursday, 18th, at 10 a. m.

AUGUST 18, 1864.

Parties present as before.

Adjourned to the 19th, 1864, at 10 a. m.

AUGUST 19, 1864.

Parties present as before.

Hans Crocker's examination continued.

I now produce, in answer to the question propounded Aug. 8, 1864, the statement hereto annexed and marked Exhibit C, and also the paper marked Exhibit D, which forms a part of and is a general recapitulation of the statements contained in Exhibit C.

Adjourned, on motion of Mr. Prentiss, for Mr. Flemming, Milwaukee and Minnesota Railroad Company, to Monday, August 22, 1864, at 10 o'clock a. m.

AUGUST 22, 1864.

Parties present as before.

Hans Crocker, continued.

The Milwaukee and St. Paul Railroad Company took possession of the railroad on the 13th day of June, 1863. That company took possession of a shop for repairing engines, a shop for repairing cars, and a blacksmith shop. These were all in Milwaukee. I have an inventory of the supplies on hand at the time the Milwaukee and St. Paul Railway Company took possession of the road. I can furnish a copy of the inventory of supplies then on hand. The inventory is on file in this court.

Ques. Was the St. Paul and Milwaukee Railway Company charged, or has it been charged, in any account, with the amount of supplies on hand at the time it took possession?

130 Ans. No; there has been no charge made in any of the accounts.

Ques. Was the eastern division in any way credited with this amount?

Ans. No.

Ques. Has the eastern division been credited, or the Milwaukee and St. Paul Railway Company been charged with anything for the use or rent of the repair shops and tools?

Ans. Nothing. No entries made.

Ques. Has the Milwaukee and St. Paul Railway Company any other repair shops, except these at Milwaukee, on the line of this road?

Ans. At La Crosse and New Lisbon they have some.

Ques. Has this company used these shops and tools in Milwaukee since the 13th of June, 1863?

Ans. Yes, they have.

Ques. Were the tools in the shops in as good condition when the company took the road as they now are?

Ans. I presume they were. They are constantly changing; new ones are purchased, and repairs made daily.

Ques. Was any charge to that company or credit to the eastern division made for the amount of tools which that company took possession of with the shops?

Ans. No; there was no entry made. None of those entries were made, because I could not divide the net earnings of the road, or determine what of these things belonged to the eastern division.

Ques. Had any of these tools, which were passed over to this company, ever been used before that time elsewhere than in the shops at Milwaukee?

Ans. Not that I know of.

The paper now presented, marked Exhibit E, is a statement of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad from June 13th, 1863, to June 30th, 1864, inclusive.

Ques. In this account, marked Exhibit E, is the item, repairs, tools, &c., $6,978 03, for the tools in the shops at Milwaukee?

Ans. I cannot answer as to all; I presume they are, but I
131 cannot tell.

Ques. Have you personal knowledge of the first seven items of the account marked Exhibit E, or of any, and what portion thereof?

Ans. I have some personal knowledge of them, but not generally. These expenditures were made under the management of the Milwaukee and St. Paul Railway Company.

Ques. Have you ever settled with that company, so as to recognize the correctness of or be bound by the amounts of any of these first seven items?

Ans. I have not. I suppose all those questions are to be determined by the court.

Ques. Have you made any settlement in regard to any of the items of this account?

Ans. I have not.

Ques. Have you any personal knowledge that the exact amount of any of these items is correctly charged in this account?

Ans. I have no personal knowledge, but have no doubt they are correct.

Ques. Has this company, since June 13th, 1863, used the materials on hand when they took possession in the repairs of locomotives and cars?

Ans. They have.

Ques. Do you know upon what rolling stock the repairs were made which are charged in items 5 and 6, in Exhibit E?

Ans. I cannot tell that.

Ques. Is any portion of the last item, "Balance to credit eastern division," now in your hands?

Ans. No, sir.

Adjourned to 2 o'clock p. m.

AUGUST 22—2 *p. m.*

Parties present as before.

Mr. L. J. Higby is in possession of the elevator here at Milwaukee under a lease. The first lease was from S. Chamberlain, when he was in possession of the road, and afterwards confirmed by the
132 Milwaukee and Minnesota Railroad Company, in 1858 or 1859; I think in 1859; then by me as receiver, subject to the order of the court or the termination of my office. The Milwaukee and St. Paul Company continued the same lease.

Ques. When did you, as receiver, first renew or give any lease of the premises to Higby?

Ans. Some time in the summer of 1860, soon after I took possession. It was a verbal renewal or confirmation of the old lease. We went before Judge Miller, and he concluded it was best to let it remain as it stood. This summer, since April, 1864, I gave him a written confirmation of the lease. The date of this was on the 3d of May last.

Ques. Had you, previous to giving this confirmation of the lease, May 3d, 1864, received notice or request from or on behalf of the

Milwaukee and Minnesota Railroad Company, that you should take possession of that elevator as receiver?

Ans. I received such notice, but the date I cannot recollect.

Ques. Did you not receive it previous to giving that written confirmation to Higby?

Ans. I cannot tell or recollect the date it was served.

Ques. Was that confirmation which you gave to Higby actually made and delivered before the 1st day of June, A. D. 1864?

Ans. I cannot tell, but think it was before the first day of June.

Ques. What rent has Higby paid you for the use of the elevator?

Ans. He pays no rent; he was running it and handling certain freights for the road free of expense.

Ques. Could not that elevator be rented so as to produce a rent?

(Objected to: 1st. Because the elevator was built and belonged to Mr. Higby. 2d. Because it was in possession of no one who was a party to or claiming under a party to this suit at the time Crocker took possession of the road as receiver. 3d. Because the re-
133 ceiver never acquired possession in fact, or was authorized by the court to take possession of Mr. Higby's elevator. 4th. Because the order did not allow the receiver to collect any dues of the La Crosse Railroad Company, or take possession of any of its property, except the road itself, its rolling stock, and the depots in possession of the company or the defendants, and used in connection with the road. 5th. Because the Milwaukee and Minnesota Railroad Company if they had any interest in the question, are stopped by their own confirmation of the lease.)

(Received subject to the objection.)

Ans. If the company owned it, it could be rented. If I, as receiver, had the control of it, I could rent it; cannot say for how much.

Ques. What, in your opinion, would be a fair monthly rent for the elevator?

Ans. I never had any offer for it, and cannot tell. About the average quantity of wheat received in that elevator during the year is 15,000 bushels per day.

Ques. What, in your opinion, does it cost per day to operate the elevator?

Ans. Probably would average $30 per day; can't tell with any certainty. I don't know what it costs.

The direct examination of this witness is here suspended by consent.

Examination of Hans Crocker, receiver, continued:

Ques. Since the 13th of June, 1863, have you been in actual possession, and have you in fact operated the eastern division and its rolling stock, actually receiving the revenues thereof, and disbursed the expenses of operating the same?

Ans. From the 13th of June, 1863, to May, 1864, the St. Paul Company was in possession of and operating the eastern division of the road, under the order of the court. Since then it has been in my possession.

Ques. Have you, since May 1st, 1864, actually operated the eastern division and its rolling stock, and have you in fact received the revenues arising therefrom, and disbursed the expenses of operating the same?

134 Ans. Since the 1st of May, 1864, I have operated the road. There is a part of the balance of the earnings in the hands of the St. Paul Company not paid over.

Ques. From and after the orders of the court of the 28th April, 1864, requiring the St. Paul Company to deliver the possession of the eastern division to you, what change in fact was made as to the possession and operation of the eastern division?

Ans. The possession of the eastern division was surrendered to me the same as I surrendered the road to them. It was surrendered to me by Mr. Hughes or Mr. Goodrich, and I took it.

Ques. I do not speak of theories or constructive possession and operation; I ask for the actual, tangible, visible fact, and do you say that since May 1st, 1864, you have been operating the eastern division and its rolling stock?

Ans. I say yes.

Ques. Have you been actually in the receipt of the revenues of the eastern division since May 1st, 1864?

Ans. About the 1st of May, when I took possession of the eastern division of the road, I found that under the order of the court, and the claim of the St. Paul Company, that the rolling stock of the eastern division would not be sufficient to operate that division. It would have been necessary for me to open a new set of books and employ a new set of officers, had I determined to run the eastern division independent of the western division. I therefore told Mr. Goodrich that I wanted him to operate the eastern division of the road for me, to retain the necessary officers, or to consider them in my employment jointly with the St. Paul road, and to keep the accounts as they had been kept by the St. Paul Company for the year previous, showing the proportion of earnings applicable to each division. I consider that arrangement the best arrangement for the eastern division. To have opened a new set of books would have required a large expenditure, and would have taken a great deal of labor and time, at least one month, before they could have been got up.

Ques. In making this arrangement, was Mr. Goodrich then acting on behalf of the Milwaukee and St. Paul Railway Company, and was your arrangement really with that company, through Mr. Goodrich as its agent?

135 Ans. Mr. Goodrich was at that time the general manager of the Milwaukee and St. Paul Company; I made the arrangement with him as the manager of the road of the St. Paul Company, but so far as he was to act for me, it was made with him personally.

Ques. Are the earnings of the eastern division since May 1, 1864, received by Mr. Goodrich, as your personal representative, or are they received by the Milwaukee and St. Paul Railway Company?

Ans. They are received, as they had been received before that time, by the St. Paul Company, or by their receiving officers.

Ques. Is it true, then, that you are actually in the receipt of the revenues arising from the eastern division since May 1, 1864?

Ans. The revenues of the eastern division are subject to my order, and have been since May 1, 1864.

Ques. With whom have you kept your bank account as receiver since June 11, 1860?

Ans. With the Wisconsin Marine and Fire Insurance Company's Bank.

Ques. Have you, as receiver, made deposits or kept a bank account elsewhere than at that bank?

Ans. From time to time I have had small deposits with the Merchants' Bank in this city, mostly arising from collections made by the Merchants' Bank.

Ques. By whom are the conductors, engineers, and other employees, engaged in the actual operation of the eastern division since May 1, 1864, employed and paid?

Ans. They are the same men who were employed in the same capacity by the St. Paul Company when I took possession of the road; ever since I took possession of the road Mr. Goodrich has always employed these men; they are paid by the St. Paul road, and the proportion is charged to the eastern division.

Ques. On and after April 28, 1864, was any change whatever made in the actual management of the eastern division, except the method of keeping the accounts by the St. Paul Company? If so, what?

136 Ans. The road was running just as it had been before: accounts kept between the two divisions; earnings and expenses divided pro rata.

Ques. Have you, since June 13th, 1863, ever demanded of the St. Paul Company the possession of the rolling stock that was on the road when you were appointed receiver and took possession, except the forty box cars mentioned in the land grant decree? If so, when, where, and upon what officer or person of said company did you make such demand?

Ans. About the 29th or 30th of April, 1864, at the office of Cary and Pratt, in Milwaukee, I stated to Mr. Hughes, the president of the St. Paul Company, the substance of the orders restoring the eastern division to me, and demanded possession of the road and of the rolling stock; I went into no particulars as to rolling stock; wanted to get all I could. He replied: "You shall have possession of the road and all the rolling stock that the eastern division is entitled to."

Ques. Have you ever made any other demand for any part of the rolling stock mentioned in the last question, except that mentioned by you in your last answer?

Ans. I have had frequent conversations with Mr. Hughes since that time, in all of which he has reiterated what he said before, that the rolling stock on the road at the time I took possession of the road, and the portion of the stock bought and built by me, belonged to the western division—the land grant road.

Ques. How much and what rolling stock did the St. Paul Company surrender to you upon this demand?

Ans. I cannot answer that without going into figures; I can ascertain and furnish it.

Ques. Did they surrender to you any locomotive? If so, what is its number or description?

Ans. They surrendered to me, I think, about seven locomotives, but I cannot give the numbers.

Ques. State how, in what manner, and in whose presence, this rolling stock was surrendered to you by the St. Paul Company; how many locomotives and how described by numbers, or otherwise, and how many and what passenger and other cars, giving the numbers and description of each.

137 Ans. It was surrendered by Mr. Goodrich in the office of the company; no one was present but Mr. Goodrich and myself; the rolling stock was not in view; it was on the road; particular locomotives and cars were not specified; the statement hereto annexed and marked Exhibit N N shows the amount of interest in rolling stock then transferred to me.

Ques. Was it not understood, before you made this demand, that the eastern division and rolling stock should remain in the possession of the St. Paul Company, and be operated as you have stated, and was not the demand and the pretended surrender of possession to you merely formal?

Ans. There was no such understanding at all, direct or indirect, or otherwise, and the arrangement was the best that could have been made for the eastern division.

Ques. Did you accept what took place between you and Goodrich as a delivery of possession to you?

Ans. I did.

Ques. What day did this take place?

Ans. I think it was the last day of April, 1864.

Ques. On what day was the arrangement made between you and the St. Paul Company that you have stated in relation to their operating the eastern division?

Ans. I think it was on the same day.

Ques. Is not the St. Paul Company operating a road in competition with the eastern division from Milwaukee, by way of Columbus, to Portage City?

Ans. They are.

Ques. Is not the pecuniary interest of that company, as the owner of a competing line of road, directly opposed to the interests of the eastern division?

Ans. I suppose it is.

Ques. Since the completion of that company's line of road, are not the agents and runners, both at Milwaukee and La Crosse, employed by the St. Paul Company, endeavoring to divert business from the eastern division?

Ans. I know nothing of that at all.

Ques. Are there any runners or agents employed by you at Milwaukee or La Crosse to compete with the St. Paul Company as to business between Milwaukee and Portage.

138 Ans. I have none.

Ques. Since the completion of that company's line, has not the through travel and freight ceased on the eastern division, so far as it is in the power of that company to produce that result?

Ans. The natural tendency of passengers and traffic would be to go on a through line, either to Milwaukee or La Crosse, and such has been the result.

Ques. What was the average earnings of the eastern division per day for ten days before and ten days after the St. Paul Company commenced operating their competing line, as near as you can state from your knowledge or recollection?

Ans. I will furnish a statement.

Examination suspended.

SEPTEMBER 12, 1864.

Hans Crocker—Re-direct examination resumed:

Ques. Since the completion of their road by the St. Paul Company, do trains run through from Milwaukee and La Crosse, or from La Crosse to Milwaukee, as they did before that time over the eastern division?

Ans. They do.

Ques. Since the completion of their road by the St. Paul Company, do not the trains that leave La Crosse for Milwaukee avoid the eastern division, and come from Portage to Milwaukee over the St. Paul Company's road, by way of Watertown?

Ans. The through trains run from La Crosse to Milwaukee by way of Watertown, but the passenger trains make their connections east and west at Portage.

Ques. Is not the St. Paul Company now using the rolling stock on the road when you were appointed receiver, except the forty box cars, on the Watertown branch or division of the road, in connection with the western division owned by the St. Paul Company?

Ans. Substantially they are, but they furnish the eastern division of the road all the cars and engines necessary to do the business of the eastern division.

Ques. Can passengers now leave Milwaukee for La Crosse, over the eastern division, and go through without change of cars?

Ans. They cannot.

139 Cross-examination by Mr. Brown:

Ques. Can passengers leave Milwaukee, on the eastern division, and have a connection, and go through to La Crosse, in the same time as passengers leaving Milwaukee on the St. Paul line?

Ans. They can.

Ques. When the St. Paul Company took off the rolling stock claimed by them as their own, had you enough stock left to operate the eastern division?

Ans. No.

Ques. Have they furnished the rolling stock necessary to operate the eastern division since that time?

Ans. They have.

Ques. What proportion of the whole rolling stock now used on the eastern division have they so furnished?

Ans. My answer to that will be found in Exhibit N N, hereto annexed.

Ques. How long since they commenced operating their road as a through road?

Ans. Since the 29th of August, 1864.

Ques. Is there any conflict of interest between the St. Paul Railway Company and the eastern division except for through business from Milwaukee to La Crosse, and are not their interests as to all other business identical?

Ans. There is no necessity for any conflict between them. Their interest as to all local business are identical.

Ques. Can you, as receiver of the eastern division, through connection with any other road than the St. Paul road, do through business?

Ans. If you mean through to the Mississippi river, I say no.

Ques. Are there any means by which you, as receiver, can share in the through business, except by voluntary arrangement with the St. Paul Company?

Ans. There are none.

Ques. On May 1st. 1864, at the time you made your arrangement with the St. Paul Company, and until the 29th of August last, had they any through route from Milwaukee to the Mississippi except over the eastern division, and did not their entire through
140 business during that period pass over the eastern division?

Ans. No; they had no other through route, and all their through business, to and from Milwaukee, passed over the eastern division.

Ques. Was there any company or person, except the St. Paul Company, with whom, on the 1st day of May last, you could have made arrangements for the additional rolling stock necessary to operate the eastern division?

Ans. I think none.

Ques. Was there any other mode, except the one followed by you, by which you could have procured such rolling stock?

Ans. None that I know of.

Ques. Was this arrangement made by you with the St. Paul Company designed to be a permanent arrangement, or only temporary, until the court should meet again and pass upon the claim of that company to the rolling stock, and decide upon what the receiver should do in the premises?

Ans. It was a temporary arrangement, until the ownership of the rolling stock should be determined and settled, or I directed otherwise by the court.

Ques. Was it a matter of choice or necessity imposed by the non-surrender of more of the rolling stock by the St. Paul Company?

Ans. It was a matter of necessity, and I am satisfied that it was the best arrangement that could have been made by the eastern division.

A stipulation is presented and hereto annexed and marked Exhibit O O.

Ques. Did you first take possession of the entire road, under an order in a case in which Sebre Howard was complainant, a copy of which order is set forth in Exhibit marked O O?

Ans. I did on the 11th of June, 1860.

Ques. How long were you in possession of the road under the order alluded to, before you were notified of your appointment in this case?

Ans. Nearly one month.

Ques. Did you in good faith continue to keep your accounts
141 of the whole road as an entirety, honestly believing that it was the province of the court, and not yourself, to decide upon the conflicting claims of the various parties to the earnings?

Ans. Yes; and for a further answer I refer to my direct testimony in answer to the question put to me, to be found on sheet 2 of my testimony.

Ques. Had the parties interested in the second mortgage and the eastern division access to your books at all reasonable times when they desired, and did they, or any of them, at any time prior to your surrender to the St. Paul Railway Company, complain of the manner in which the accounts were kept?

Ans. Mr. P. Dow was in possession of the road under Mr. Chamberlain when I was appointed receiver. He is the only one representing that division who appeared to take any interest in the operation of the road. He had, at all times, access to the books and accounts kept in the office, and knew about the manner in which they were kept, and the division of earnings and expenses made. I consulted him from time to time as to steamboat and other contracts, the purchase and manufacture of rolling stock, and I never heard him find any fault with the management or operation of the road in those respects. He was entirely satisfied with the method of keeping the accounts. They were kept as they were kept by Mr. Dow when he was in possession of the road.

Ques. Did you file accounts from time to time, in the court, showing the operation of the road?

Ans. Yes.

Ques. And did the court, or either of the parties in this suit, object to the manner in which the accounts were kept?

Ans. Never to my knowledge.

Ques. Did you, on the 13th day of June, 1863, surrender possession of the road to the St. Paul Railway Company, in obedience to an order made in the case of Charles Howard, assignee, a copy of which order is hereto annexed and marked Exhibit P P, and of other orders made in this case, and in the western division?

Ans. Yes.

Ques. Was the surrender made by you in the full belief that
142 you had no option, but was bound to obey the orders of the court in that particular?

Ans. It was.

Examination of Hans Crocker, receiver, continued by defendant:

Ques. In your annual report of the operations of the road for the year 1861, you appear to have paid into the sinking fund the sum of $12,000. Why did you discontinue making these payments to the sinking fund?

Ans. Because the first-mortgage bond of the eastern division could not be bought at par, as contemplated by the sinking fund mortgage.

Ques. Are you familiar with the provisions of the sinking fund mortgage to which you have alluded?

Ans. I have read it, and think I am familiar with it.

Ques. In making the payment of $12,000 did you consider yourself, as receiver, to be acting under, and governed by, the provisions of that sinking fund mortgage, or any order or orders of court appointing you receiver, by which you were directed to pay out of the receipts the interest accruing on said first mortgage?

Ans. I made the payment under the orders appointing me receiver, and the sinking fund mortgage.

Ques. You mean then to say that, by order of the court, and under the provisions of the mortgage, you considered it proper to pay, and did pay, the $12,000 mentioned in your report for the year 1861?

Ans. Yes.

Ques. Being governed by that mortgage, and therefore acquainted with its provisions, is there any provision which directs that the annual payment of $12,000 shall only be made to the Trust Company when it can purchase the bonds at or under par?

(Objected to because the mortgage is in evidence and the testimony called for is immaterial. Objection overruled and exception.)

Ans. What I referred to in my previous answer is this: that the moneys can't be invested unless the first mortgage bond can be bought at par, or under.

143 Ques. Did you ever make any application to the court for instructions as to whether you were to continue making these payments to the sinking fund?

Ans. Last fall I made an application to the court in writing, stating the amount due on the sinking fund, and that Mr. Lawrence, president of the United States Trust Company, had applied to me for the payment of the balance due on the sinking fund. I also stated that there were funds then in the hands of the Trust Company, which they could not invest by reason of the first mortgage bonds being above par; that I had been informed that the Milwaukee City bonds, secured by mortgage on a portion of the La Crosse road, could be purchased at less than their face, and that, to all intents and purposes, it was as well to all the subsequent creditors of the road that those bonds should be paid, as the first mortgage bonds, as the extinguishment of so much prior debt. In this application I asked for authority to authorize the United States Company to invest the sinking fund in the purchase of those city bonds, and that I should be authorized to pay the balance due on the sinking fund. Judge Miller declined acting upon the matter at that time, stating that the court would meet in January, when that matter could be heard and argued.

Paper hereto annexed, and marked Exhibit W W, is a statement of the earnings of the eastern division for the ten days before and ten after the St. Paul Company commenced operating their competing line mentioned in my former testimony.

The complainant here offers a copy of a letter from Bronson & Soutter and Prentiss Dow to Selah Chamberlain, and the answer of Chamberlain thereto, which are hereto annexed and marked Exhibit X X, to which Mr. Carpenter objects as irrelevant and immaterial. Objection overruled and Mr. Carpenter excepted.

The complainant offers the advertisement of sale by the marshal in the land grant case, order confirming sale, description of premises conveyed by the marshal's deed to the purchasers, and their conveyance to the Milwaukee and St. Paul Company, and the order
144 of the 12th of June, 1863, made in the land grant case, which are hereto annexed and marked Exhibits Y Y, 1, 2, 3 and 4.

Hans Crocker's examination continued:

In addition to the rolling stock referred to in Exhibit N N, the Milwaukee and St. Paul Railway Company have furnished us as many engines, passenger and baggage cars as have been needed to do the business of the eastern division—say about four or five engines, four passenger cars, and as many baggage and express cars.

Mr. Brown presents and puts in evidence the several orders of the court, certified copies of which are hereto annexed, and marked, respectively, Exhibits E E E, F F F, G G G, H H H.

Ques. Have you had any arrangement, express or implied, with any of the persons with whom you have kept your funds as receiver, for any allowance, advantage, or benefit, directly or indirectly, in any way or manner, or upon any terms, conditions, or contingencies, for or on account of such deposit, or in any way resulting therefrom?

(Objected to as a wanton insult offered by counsel to a witness on the stand, he fully believing that there is no fact in the case justifying any such question, but willing to avail himself of an opportunity of insulting the witness. Objection overruled and exception.)

Ans. I have had no such arrangement or understanding about the matter, either present, past, or future.

Ques. Averaging the time that you have been receiver, what, as near as you can state from recollection, has been the amount of funds in your hands as receiver?

Ans. I cannot tell that. Sometimes I have overdrawn my account, and sometimes have had a large surplus on hand. In the fall and winter of 1860, when currency was very much depressed, I had at one time about $100,000 on hand. I will furnish a statement of the monthly balances of my bank account, as receiver, from June 1st, 1860. Paper hereto annexed, and marked Exhibit O O O, is a statement of such balances.

Ques. Have you ever applied to the court for leave to pass your accounts and to pay any balance into court?

Ans. I have not.

H. CROCKER.

145 SEPTEMBER 22, 1864.

The receiver, by his counsel, now claims that he be allowed the usual percentage upon receipts and disbursements, or that he may have such other compensation as receiver as is usual and just, and that the same be made a credit to him against any balance in his hands.

Second. Also that he be allowed for such other charges and disbursements against him as receiver, for legal services and expenses, as he may here present, so far as they are just and reasonable.

SEPTEMBER 23, 1864.

Mr. Carpenter files paper hereto annexed, and marked Exhibit K K K.

Wallace Pratt, a witness produced on the part of the receiver and sworn and examined.

Mr. Brown offers the three accounts hereto annexed, and marked Exhibits L L L, M M M, and N N N, and asks that they be allowed and credited to the receiver on his account.

146 Mr. Carpenter objects to all these accounts:

1st. That they are not included in or covered by the order of reference to the auditor; and as to the account marked Exhibit L L L, makes the further objection that it does not purport to be a service rendered to the receiver in this cause, but for services rendered to Hans Crocker, esq., as receiver in another cause, which has not been referred to this auditor.

Overruled and exception.

Ques. Will you state whether the disbursements charged in those accounts were actually made, and were the services therein charged rendered, as charged in said accounts?

Ans. They were, and the charges made are reasonable compensation for the services rendered.

WALLACE PRATT.

The respective parties before me stipulate that I shall report, among other things, as follows, viz: "I further report that on the first appearance of the respective parties before me, Mr. Carpenter, solicitor as aforesaid, stated that the great mass of the accounts of the receiver would not be attacked before the auditor by him or his clients; that he would file with the auditor special exceptions to the several items of said account which he intended to attack; and that as to all items not so specially excepted to, the auditor might be excused from the manual labor of examining the vouchers to sustain the same;" and said Carpenter did, in pursuance thereof, file with me said special exceptions to items, which is hereto annexed, and marked Exhibit K K K.

Adjourned to 9 o'clock a. m. on the 24th inst.

147 SEPTEMBER 24, 1864.

Parties present as before.

Mr. Brown, on behalf of the receiver, files statement and claim hereto annexed, and marked Exhibit P P P.

Selah Chamberlain, sworn on behalf of the receiver, testified as follows:

Ques. Were you cognizant of the fact of the payment of certain sums of money on the Cleveland judgment?

(Mr. Carpenter objects to the question as immaterial, irrelevant, and incompetent. Objection overruled and exception.)

Ans. I was; I knew at the time this was paid.

Ques. Do you know whether or not counsel for the Milwaukee and Minnesota Railroad Company assented to the payment by the receiver of any sums, and what sums, upon that judgment? If so, please state who it was, and what were the circumstances.

(Objected to because no stipulation could have any effect unless the same was in writing, and if it was in writing it should be produced, and as immaterial and incompetent. Overruled and exception taken.)

148 Ans. About the time the first order was granted for the payment of twenty-eight thousand and some odd dollars, in April, 1861, I had a conversation with Mr. Carpenter in relation to it, and he said he would not oppose the getting the order, and would like to have it granted, because the money was going to Mr. Cleveland, and Cleveland was owing him some $4,000, and had promised that he would pay it if he got a payment from me on the judgment; one of the orders that was granted after that, for the payment of ten thousand dollars, I believe in June, 1861; Mr. Carpenter wanted the order granted, for Mr. Cleveland was owing him a thousand dollars, which he promised to pay when he got it. I don't recollect of having any other conversation with Mr. Carpenter pertaining to the orders. Of the money obtained on the first order, about $22,000, in the receiver's checks, were paid to Mr. Cleveland. The second order for $10,000, the money was paid over to Mr. Cleveland on the Cleveland judgment.

Cross-examined by Mr. Carpenter:

Ques. The order for the payment of the twenty-eight thousand and odd dollars was made April 22d, 1861. How long before that date did you have this first conversation with Mr. Carpenter?

Ans. The matter was talked up for several weeks before we got the order among the counsel who were trying to get it. I cannot state the exact time of the conversation with Mr. Carpenter.

Ques. Where was the conversation?

Ans. It was on East Water street, near Wisconsin street; he had come down from his office.

Ques. Who was present?

Ans. Mr. Carpenter and myself.

Ques. Was any one else present?

Ans. I don't recollect as any one else was present.

Ques. Did you apply to him upon the subject, or he to you?

Ans. I believe Mr. Carpenter spoke to me about it, and wanted to know how we were getting along in getting the order.

Ques. Had you ever had any conversation with him before upon the subject?

148 Ans. I don't recollect that I had.

Ques. What reply did you make to the question?

Ans. I think I said the prospect was, we should get it; that Mr. Lynde and Mr. Van Dyke had it in charge.

Ques. What was next said, and by whom?

Ans. I don't recollect; I have given the substance of the conversation, as near as I can recollect it.

Ques. Can you, from present recollection, state positively to anything else that was said, either by you or by him, in that conversation? If so, relate it.

Ans. Mr. Carpenter said that Mr. Cleveland was owing him $4,000, which he had promised to pay when he made a collection, or got a payment from me, and that he (Mr. Carpenter) wanted the money.

Ques. Can you recollect anything else that was said by you or by him in that occasion?

Ans. I don't know that I do.

Ques. The order for the payment of $10,000 was made June 29, 1861. How long before that was this second conversation that you have testified to with Mr. Carpenter?

Ans. It was between the time when counsel had applied for it and before it had been got.

Ques. Where was the conversation, and in whose presence?

Ans. I cannot answer that question, for I don't recollect.

Ques. Have you no personal recollection of where we were, whether indoors or outdoors, or out walking or sitting, or other circumstances attending that conversation?

Ans. I could not say where it was, but my impression is that it was in Mr. Carpenter's own office, where I went to inquire for Mr. Cleveland.

Ques. Who commenced the conversation at that time in regard to the money order?

Ans. I think that I did myself. I told him that we were trying to get another order. I wanted to find Mr. Cleveland, and thought he was then here in town, and to ascertain whether he would take the currency, which was then very bad. Mr. Carpenter told me Mr. Cleveland was in town, but was stopping at a private house.

148 Ques. What else did Mr. Carpenter say, if anything, at that time?

Ans. Mr. Carpenter said that Mr. Cleveland was owing him $1,000, which he had promised to pay when he got the next payment from me, and on that account he would like the money obtained.

Ques. Did you go to Mr. Carpenter's office for any other purpose than to ascertain whether or not Cleveland would take currency from you?

Ans. I went there to ascertain where I could find Mr. Cleveland. My object to find Mr. Cleveland was to ascertain whether he would take currency; I had no other object.

Ques. Is this all that was said at that time? If not, repeat it.

Ans. I don't recollect of anything else.

Ques. Did you ever apply to Mr. Carpenter to stipulate, on behalf

of the Milwaukee and Minnesota Railroad Company, for the payment of any sum whatever out of the funds in the receiver's hands?

Ans. No, sir; I did not.

Ques. Were you, at the time these several orders were made, the owner of this Cleveland judgment, so-called?

Ans. I was. I think Mr. W. P. Lynde was the attorney who represented that judgment.

Ques. Do you now own that judgment?

(Objected to as irrelevant. Objection overruled, and exception.)

Ans. I do not; I suppose it is owned by the Milwaukee and St. Paul Railway Company; I sold it to them.

Ques. When did you sell this judgment, as near as you can state?

Ans. It must have been in June, 1863; my impression is, about the 25th.

Ques. Did you sell it absolutely to this company, or is there any understanding or agreement by which you are to be interested in any contingency in the judgment?

Ans. I did sell it absolutely, and have received my pay.

Direct examination resumed:

149 Question. Did you get the full face of the balance due on the judgment?

Answer. Yes, I did, with back interest in securities.

Cross-examined by Mr. Carpenter:

Question. In what was the payment for this judgment made, and how made?

Answer. In one income bond of the Milwaukee and St. Paul Railway Company for $89,137 70, which is unsecured except by a pledge of the income of the road after paying the interest on the mortgage bonds; the bond was due in July, 1864.

S. CHAMBERLAIN.

150 Norman J. Emmons, a witness produced, sworn and examined on behalf of the receiver, testified as follows:

Ques. Do you know whether or not counsel for the Milwaukee and Minnesota Railroad Company assented to payments by the receiver on the Cleveland judgment? If so, please state particulars.

(Objected to by Mr. Carpenter as incompetent, irrelevant and immaterial. Objection overruled and exception.)

Ans. I knew Mr. Carpenter was acting in this suit as counsel for the Milwaukee and Minnesota Railroad Company, or appeared so of record and in court. In April, 1861, Mr. Van Dyke and myself, as counsel for Mr. Chamberlain, applied to the court for an order directing the receiver to make a payment upon the Cleveland judgment. That application was made at first informally at Chambers. The district judge directed us to give notice to parties who were solicitors and counsel of record in the cause. Afterwards I had some conversation with Mr. Carpenter on the subject, at which time he had been made aware that an application had been made. My application to Mr. Carpenter was to solicit him or his influence, to persuade Mr. Cleveland to take currency in payment from Chamberlain. Mr.

Carpenter told me that he would do all that he could consist-
151 ent with his professional engagements with Mr. Cleveland.
It was then known that if the order was granted we could get nothing on the receiver's check but currency, which was depreciated at the time, or doubtful. Mr. Chamberlain did not want to receive it, unless he could arrange with Cleveland to take it off his hands. I understood from some source that several thousand dollars of that money was going to Mr. Carpenter, owing to him by Mr. Cleveland. It is my impression that I got this information from Mr. Carpenter, but I will not speak positively about it, for I know Mr. Chamberlain, Van Dyke and myself talked about it, and I may have received it from them. I made no direct appeal to Mr. Carpenter for consent on his part to the order on behalf of the Milwaukee and Minnesota Railroad Company. That I had several conversations with him on the subject, and I understood him to assent fully to the orders being made on behalf of all the parties he represented. He did not make or suggest any objection. When this order was made, Judge Miller was told that all parties had been notified of the intended application. I don't know that there was any formal notice—am quite sure there was no written notice; all parties were made aware of the intended application.

Cross-examined by Mr. Carpenter:

Ques. Do you know that any notice was given to the respective parties of a time and place at which the application for payment on the Cleveland judgment was to be made, and heard by the court or judge? If so, what was the notice, how given, to whom communicated, and what did it specify?

Ans. I am not personally aware of any notice other than I have spoken of in my direct examination.

Ques. Did you, in the conversation you have spoken of with Mr. Carpenter, make any direct communication to him upon the subject of the time and place at which the application was to be heard?

Ans. I don't think I did. Mr. Van Dyke had the matter personally in charge, and my application, as I have before stated to Mr. Carpenter, was particularly if not exclusively directed to his aid in persuading Cleveland to take currency, or the receiver's check for currency.

152 Ques. Was not Mr. Carpenter at that time the attorney for Mr. Cleveland, and had he not been for many years?

Ans. Yes, I know he was acting for Cleveland as his counsel with reference to that matter.

Ques. Where was the application for the twenty-eight thousand and odd dollars payment heard, and who was present?

Ans. The application was made to the judge personally in his library, and he expressad his willingness to make the order if no objection was made. Van Dyke and myself were present, and perhaps Mr. Lynd. Then the matter lingered along before any order was made for a number of days, perhaps a week or more, in order to obtain Mr. Cleveland's consent to take currency from Chamberlain. Chamber-

lain did not want the order, and would not take it unless Cleveland could receive the receiver's check in payment. I was not present when the order was finally granted, and do not know who was there.

N. J. EMMONS.

Thomas L. Ogden, a witness produced, sworn and examined on behalf of defendants, testified as follows :

Ques. Did you ever, as solicitor in this cause, have notice of any time or place at which any of the applications for payment of money on the Cleveland judgment, so called, would be made and heard by the court and judge?

Ans. I never had any to my recollection. My belief is that I never had any.

Ques. Did you ever, as solicitor in this cause, stipulate or consent that any of these payments should be made on the Cleveland judgments?

Ans. I did not.

Cross-examined by Mr. Brown :

Ques. Did you have a conversation with Mr. Emmons in which he stated to you that an application was pending before the district judge for a payment upon the Cleveland judgment?

Ans. I might have had such conversation, but I have no recollection of it.

THOMAS L. OGDEN.

153 Examination of John H. Van Dyke, a witness produced, sworn and examined on behalf of the receiver.

John H. Van Dyke, being first duly sworn, testified as follows :

Ques. Are you cognizant of the fact that orders directing payments by the receiver upon the Cleveland judgments were made?

Ans. Yes, I knew of four orders being made.

Ques. Do you know whether or not an attorney for the Milwaukee and Minnesota Railroad Company assented to the orders being made, or of the payments being made by the receiver? and if so, please give all particulars.

Ans. I know that Mr. M. H. Carpenter, who now appears of record for the Milwaukee and Minnesota Railroad Company, had knowledge of the granting of each of said orders at or about the time they were made ; that the orders of June 29th and July 18th, 1861, were made during the reference before Winfield Smith, Increase A. Lapham, and Jerome R. Brigham, before whom Mr. Carpenter and myself appeared for parties interested in the matters then being inquired into by said reference ; that the order of $20,000, which was the order of July 18th, 1861, was presented then to the commissioners to be credited on the Cleveland judgment ; that Mr. Carpenter was present at the time. My recollection is, that the order for $10,000 was in like manner presented them at or about the time it was made, for the purpose of being credited as a payment upon that judgment ; of that,

154 however, I cannot speak positively, and of Mr. Carpenter's presence. These four orders I believe I made the application

for to the court, personally, on petition. I did for three of them, and I know that Mr. Carpenter knew that such applications were being made, and at the time expressed a wish to have the whole Cleveland judgment paid up, and out of the way, so that judgments which he represented might come in the order of payment. I rested under the impression that Mr. Carpenter wished this judgment paid, until at or about the time of the application for the last order. I believe it was the last order, at any rate it was the order last made preceding the time of motions being made to vacate these orders. The way I made these applications was this: I procured from the clerk of the court a copy of the receiver's monthly account—monthly, in order to be informed when there was a surplus in the hands of the receiver applicable to the judgment. This judgment was at that time equitably owned by Selah Chamberlain, in whose name the applications were made, but the proceeds obtained from court thereon were to go either in whole or in part to Newcomb Cleveland, until the balance due him for its purchase should be paid. When I was about making the application for the order last preceding the motions spoken of, there being some considerable delay in getting the order, Newcomb Cleveland called on me once, or oftener, and I think as many times as twice, urging haste on my part in getting that order, and giving as a reason that Mr. Carpenter was about to take steps to prevent the future payment of moneys out of court, but was willing that this order should be paid, and would delay his proceedings a reasonable time for that purpose. I saw Mr. Carpenter upon the subject, and without being informed by him what steps he purposed to take, or seeking myself to know what they were. I ascertained, in my interview with him, that I could have a reasonable time in which to get this order before the contemplated steps were taken. I did get the order before any motions were filed; how long before I don't know. I can only further state that I always supposed, from my conversation with Mr. Carpenter, that he was not only willing, but anxious that this Cleveland judgment should be paid up from the proceeds in
155 court, and gotten out of the way as early as might be, and I recollect Mr. Carpenter using the expression, in regard to this judgment, that this judgment was good, and would stand. In connection with the fact of his having other claims, the collection of which would be facilitated by this judgment being got out of the way. I don't know that I can answer any further.

Cross-examined by Mr. Carpenter, on behalf of the Milwaukee and Minnesota Railroad Company:

Ques. Did you ever serve on, or give to Matt. H. Carpenter, as solicitor for the Milwaukee and Minnesota Railroad Company, any notice of the time or place when any application would be made or heard to or by the court or judge for the payment of any of these sums on the Cleveland judgment?

Ans. No, sir.

Ques. Did you ever ask said Carpenter to consent or stipulate, as such solicitor, that any of those payments might be made, or did he ever so consent or stipulate?

Ans. No, sir; my recollection is this: that when I first presented an application for these payments, I went personally to see the attorneys representing the different interests, to get their consent thereto; and there was a universal assent that the said surplus funds then in court should be applied to that judgment. I will swear that no special notice was given of the presentation of the petitions praying for such payment; and will further add that I did not deem the same necessary under the circumstances.

Ques. Did Mr. Ogden, solicitor of the complainants in this cause, consent to such payments?

Ans. Not otherwise or different than is stated in answer to the last question.

Ques. Did you apply to him, and inform him of your intended application for payment of said sums; and if yea, what did he say about it?

Ans. My impression is that I did acquaint Mr. Ogden with what I was doing; it is impossible for me to state what he did say about it; my present impression is, that he was not interested to oppose it.

Ques. Do you now recollect that at the time you applied to
156 him (Ogden) he gave you to understand that he would not oppose these payments?

Ans. I can't say definitely that he agreed to anything, or that any of you did, in regard to opposing or not opposing such application; there was a concession that that judgment had to be paid any how—a concession or impression, you may say.

Ques. What judgment or claim or interest did you understand Carpenter represented between the Cleveland judgment and the Milwaukee and Minnesota Railroad Company interests, that would be aided by getting the Cleveland judgment out of the way?

Ans. I understood that Mr. Carpenter represented the Graham and Scott judgment; was counsel in another claim or judgment—I think the Howard judgment; and was also counsel either for Fleming or the Milwaukee and Minnesota Railroad Company, and that all would be benefited by it; and I think I can give you about the language that transpired between us at the time, and the occasion.

Ques. Do so.

Ans. I think it was at the time of the payment of the twenty thousand dollar order, when we were both before the referees, and I made proof of that payment, these to be credited on the judgment. Carpenter laughingly remarked that some of his claims would come in after that judgment was out of the way. My reply was that there was a pretty big judgment yet unprovided for—meaning the Chamberlain judgment proper.

Ques. Can you swear positively that Carpenter ever knew of the time and place at which any of these applications were made, or heard by the judge or the court?

Ans. My impression is he did. Mr. Cleveland was here in almost every instance; twice, to my positive knowledge, he made his headquarters at Carpenter's office. I knew that he was anxious that Cleveland should get his money; and my very positive impression is,

that we spoke together more than once upon the subject of these very applications, at or about the time they were made.

157 Ques. Can you state positively that you ever communicated to Carpenter the fact that you intended, at any particular time or place, to move or apply for any one of these payments?

Ans. I did let him know of the application preceding the time of the filing of the notices to vacate these orders, as I have stated in my direct examination.

Ques. Did you inform him of the time at which you would make the application?

Ans. My impression is that the information I gave him at that time was that the application was then about to be made or was then pending, and the order had not been made.

Ques. Did you understand, at the time of your conversation with Carpenter, that you were giving him notice as solicitor for the Milwaukee and Minnesota Railroad Company of such application?

Ans. If you mean formal and technical notice, I answer no.

Ques. Did you state to him that you had come to him to give him notice of these applications, or anything to that effect?

Ans. I mean just what I have stated in my direct examination; Cleveland came to me and told me that Carpenter was getting ready to resist any further payment on that judgment, and wanted that I should press this order and get the payment before he did so; I found there would be delay about getting the order for want of receiver's report or something else. I went to Carpenter in his office to ascertain whether any immediate steps were about to be taken to stop further payment on that judgment, and left with the impression, after my interview with Mr. Carpenter, that none would be taken immediately. I went on and got my order before any were taken. I supposed at the time that Carpenter knew what Cleveland had told me, and I went to Carpenter's office under that impression. It is possible. I can see now, that what Cleveland said might have had the effect to deceive both Carpenter and myself; but I supposed at that time that Carpenter knew all about it as well as I did. The effect of it was that you did have notice of my then application; and I think I did tell you why I made the inquiry: but still Mr. Carpenter may not have understood what I meant.

Re-direct:

158 Question by Mr. Brown. Who were at time the attorneys for the Milwaukee and Minnesota Railroad Company employed by the board of directors?

Ans. I think N. J. Emmons was, but won't speak positively of dates. He was up to the date of the new election, which superseded the Sage board; he was my partner.

Cross-examination:

Ques. Did Mr. Emmons in fact act in court in the cause at any time as solicitor or counsel for the Milwaukee and Minnesota Railroad Company?

Ans. I am not familiar with what he did for the company, and cannot answer the question.

JOHN H. VAN DYKE.

159 Matt. H. Carpenter was sworn and examined on behalf of the defendants, and testified as follows:

At the time these orders were made directing payments on the Cleveland judgment I was acting as solicitor for the Milwaukee and Minnesota Railroad Company or A. Fleming, and for Graham and Scott, and was also and had been for years the general attorney
160 of said Cleveland; Chamberlain was owner of the judgment, but was indebted to Cleveland, and Cleveland was indebted to me. About the time that one or two of these orders was or were made, I knew in a popular way that Chamberlain had applied or intended to apply therefor; but to the utmost of my recollection I was never notified of such application as solicitor, or as representing any party in this cause; and I did not know at what time any of the applications were to be or were heard, and certainly I was never requested by any party or person to give consent, on behalf of any party or person, to such orders being made; and I never did consent thereto, either in writing or verbally. I remember the second conversation spoken of by Chamberlain, and the one testified to by Mr. Emmons, and think they occurred about the same time, and had reference to the same order, and was, I think, one of the subsequent order. I have always understood that the first order was obtained by Finches, Lynde & Miller, and the latter ones by Messrs. Emmons & Van Dyke, though of this I have no particular knowledge; their application to me was not to get my consent to the making of the orders, but to know whether, in case the orders were granted and Chamberlain got the money, currency, Cleveland would receive it in payment from Chamberlain, and I replied to both of them that I thought he had better do so, and I should certainly advise him so. If I am mistaken as to the time of these conversations—and they were before the first order—I may have added that I should be willing to take the currency from Cleveland for what he was owing me; but I am very positive, though may be mistaken, that these conversations were about the time of the making of the later orders. An examination of my bank book convinces me very strongly that I knew nothing of the first order until after it was granted, and after Cleveland had gone home. The first order seems to have been made April 22, 1861; my bank book shows a discount of my own note, I suppose of $500, on the 25th of April, and another for $200 on the 14th of May, and up to that time Cleveland had paid me nothing. On the 17th
161 of May there is a deposit credited for $1,000, which I think Cleveland paid me; and on the 19th June, ten days before the order was made, on June 29, 1861, there is a deposit of $2,000, and my recollection is that on that day he gave me $3,000, in three certificates of deposit; that I then used two of them, and sent the money east, and that the other lay in my safe until I had occasion to use it afterwards, and it appears to have been deposited July 12th,

My bill against Cleveland was for services rendered before the 1st of January, 1861, in no way depended upon the granting of these orders, and was perfectly good against Cleveland, who was a man of wealth, whether the orders were granted or not. I never received a cent more in consequence of the orders being granted, and should not have received a cent less if the orders never had been granted, and was in no way or manner interested in the allowance or denial of the orders, and never gave, and never was asked to give, any consent thereto. Mr. Fleming informs me that very soon after the first order was made he informed me of it; if so, I did not see Cleveland afterwards before he left town, or I should not have been getting my own notes discounted on the 22d of April and 14th of May.

Cross-examined by Mr. Brown:

Ques. Was a portion of the Graham and Scott judgment, for which you were an attorney, assigned to Finches, Lynde & Miller, or to a client of theirs?

Ans. There was an understanding between Graham and Scott and Finches, Lynde & Miller that a claim in their hands to collect against them should be paid out of their judgment against the railroad company; but whether that was reduced to writing or not, or whether a formal assignment of the judgment pro tanto was made or not, I do not recollect. My impression is none was made.

Ques. Did you ever go with any member of that firm to the district judge for the purpose of requesting an order upon the receiver for the payment of a portion of that judgment?

Ans. I recollect that Graham once came to me in a complaining mood after a communication which he said he had with Asahel
162 Finch, and Graham seemed to think that if Finches, Lynde & Miller were his counsel, instead of myself, he could get money from the district judge out of the fund to apply on his judgment, but that the district judge would make no order upon my request. I told Graham I thought this was probably so, and it was of no use for me to go there and ask such an order; but as the Milwaukee and Minnesota Railroad Company had an understanding with Graham that their judgment should be protected at all events, no matter what should result from the litigation, as to his judgment, a payment on the judgment would be substantially for the benefit of the Minnesota Company, and if he could get some member of the firm of Finches, Lynde & Miller to go and make the application to the judge, I would go along with him and second the request, as his counsel; my impression is that Kurtz Miller, one of said firm, and myself went to said district judge and requested such payment, and that the judge refused it.

(The part of the answer containing the conversation with Graham is objected to as not being responsive to the question, and as being scandalous in its nature. Objection sustained to the extent that the portion of the answer referred to is irrelevant.)

Ques. In the course of that application did the district judge say to you that payments must be made upon the liens in their order?

Ans. I don't recollect that he did; and I think, considering the order that he had before then made, I should have laughed in his face if

he had done so, which I don't recollect to have done, and so don't think he made the remark.

Ques. In the course of the conversation was allusion made to an order for payment on the Chamberlain judgment, and did you say that it was right, and that sums in the hands of the receiver should be paid out upon judgment liens, without waiting for the second mortgage, or did you say anything to that effect?

Ans. My recollection of that interview is very indistinct; I only distinctly recollect that the judge refused to pay anything on the judgment; but as I have made several arguments before the
163 judge, printed briefs, and delivered opinions which have been printed, to the effect that judgments are no liens in this State upon railroad franchises and property, I do not believe I said any such thing.

Ques. At what time did this conversation occur?

Ans. I am wholly unable to state, but I think after it was known that the judge was paying out the fund on other than the mortgage liens.

Ques. Was it before or after the last orders for payment on the Cleveland judgment?

Ans. I cannot state.

Ques. Was it before or after the decree in the second mortgage cause in the district court?

Ans. I cannot say when the decree was made without referring to papers. My impression would be that it was after the decree, but I am not at all certain.

Ques. Did you afterwards have a conversation in the office of Finches, Lynde & Miller, with Mr. Miller, in which he stated the facts set forth in my former question to you as to what took place before the judge, and in which your reply was that your consent could not bind the Minnesota Railroad Company?

Ans. I have no recollection of any such conversation.

Ques. Was this conversation with Judge Miller before or after the stipulation made with the trustees of the second mortgage?

Ans. My recollection as to dates and relative order of events is nearly worthless. I have been engaged in this La Crosse litigation for over five years as attorney for Cleveland, Fleming, Graham & Scott, and the Milwaukee and Minnesota Railroad Company, and it is utterly impossible for me to fix from memory the date of the interview; and I do not think I have any memorandum of it or other means of arriving at it.

Ques. Up to the time of that stipulation with the trustees had your relations with Judge Miller been most friendly; and had you taken occasion often publicly to express your approval of his course pursued in the second mortgage cause and of his orders made therein?

(Objected to as incompetent and immaterial. Overruled and exceptions taken.)

164 Ques. You have stated that Graham & Scott had an arrangement with the Milwaukee and Minnesota Railroad Company by which the former were to be protected in all events as to the payment of their judgment. Was that arrangement verbal or in writing?

Ans. When I was first applied to to be retained by Mr. Fleming to protect the interest of the Minnesota Company, I stated to him the various retainers which I had before had from Cleveland, Graham & Scott, and perhaps others, and told him that as Graham & Scott's judgment was subsequent to the date of the Barnes mortgage, this litigation might reach a point where the interests of the Minnesota Company would be opposed to those of Graham and Scott, and that I could not accept any retainer which would bring me into collision with my retainer for Graham and Scott. To this it was agreed that if the litigation did reach any such point Graham and Scott should be perfectly protected, and upon this condition I accepted the retainer; and subsequently, after Fleming's party got control of the Minnesota Company, a formal written contract was made, the precise terms of which I do not recollect, but which was satisfactory to Graham. as a compliance with the previous understanding with me.

(Mr Brown objects to all the answer, except that part which states that there was a written contract, as not responsive to the question. Overruled and exception.)

Ques. Did you, as representing the Fleming interest in the Minnesota Railroad Company, argue a motion made by one of the defendants in the second mortgage case for a receiver, and did you also assist in arguing the motion for a receiver in the Howard case?

(Objected to as immaterial. Overruled and exception.)

Ans. I have no recollection of any application for a receiver by a defendant in the second mortgage cause, and of course do not recollect whether I argued it, if there was one; my recollection is, that the order of the court appointing the receiver in the Howard case recites that the motion was made or argued by Hubbel & Carpenter; but I have no recollection of the argument, and cannot say from recollection whether I participated in it or not.

MATT. H. CARPENTER.

165 The examination of James S. Brown, a witness produced, sworn, and examined on behalf of the defendants.

MONDAY, *Sept.* 26, 1864.

James S. Brown, being first duly sworn and examined, testifies as follows:

Ques. Was you counsel for the complainants in this cause from the commencement of this suit until some and what subsequent time?

Ans. I was of record counsel for the complainant from the commencement of the suit until to-day, but those representing the second mortgage, to wit, Mr. Sage and some others, who are interested in it, assenting to releasing me from my retainers a short time before I appeared here for the receiver, and from that time I consider myself as having no connection whatever with this suit, except as attorney for the receiver. I refused to act for the receiver until such assent was given.

Ques. While you remained counsel in fact for the trustees, did you have the principal management of this cause, so far as regarded arguments and proceedings in court?

Ans. I so considered it. I believe such to have been the fact.

Ques. Did you at any time receive notice of any of these applications for payment on the Cleveland judgment, or did you even know, at the time they were being heard, that they were being heard?

Ans. I have no recollection of receiving any such notice, and feel very confident that had I had an opportunity of opposing the allowance of the orders I should have done so. My impression is, that I either verbally or in writing, after hearing of these orders, requested the judge to require notice before giving other orders. Still, it was a great while ago—there were many motions and proceedings in the case—and I possibly may be mistaken in my recollection. I will add

166 that Mr. Thomas L. Ogden was solicitor of record for complainants, and notices were usually served on him. On the western division I was merely employed in a dispute between the first and second orders of bondholders, and should have considered Mr. Cary as representing the general interests of the complainants in that case.

Ques. Did you ever stipulate, assent, or consent, directly or indirectly, to the making of any of these orders?

Ans. I have no recollection that I did, nor do I believe I did, except in so far as it may be implied from the mere fact of my failure afterwards to move to have the money paid back.

JAMES S. BROWN.

Adjourned to Sept. 27, at 10 a. m.

167 Dan. J. Whittemore sworn and examined:

Question. What is your occupation, and by whom are you employed?

Answer. I am an engineer, and am employed by the St. Paul Railway Company.

Question. (A book is here shown to the witness.) What book is this?

Answer. This is a cross-section book from station 4508 to station 5028 plus 30 feet.

Question. Where is station 4508?

Answer. About a mile and a half east of Midland Station.

Question. How far is it from that station to station 5028 plus 30 feet?

Answer. About 9 miles and 8-10ths of a mile.

Question. Is this book kept and does it proceed in the usual form of a cross-section book for the construction of a railroad between these two sections?

Answer. It does.

Question. How far apart are the stations marked and represented by this book?

Answer. They are intended to be 100 feet.

Question. By what engineer does this book purport to have been kept and used?

Answer. Abram Vliet, ass't engineer. The book is in handwriting of Andrew Sexton, who was an assistant engineer, and was employed in the office of the engineer of the La Crosse company, and also in the field during the construction of the eastern division.

Question. Who purport by this book to have been con-
167 tractors or sub-contractors on this section, and where did their work begin and where did it end?

Answer. Sumner & Potter purport to be the contractors—their work commencing at station 4508 and extending to station 5028 plus 30 feet.

Question. Turn to your maps and state where station 5028 plus 30 feet is, with reference to freight depot at Portage.

(Objected to as immaterial; objection overruled, and Cary excepts.)

Answer. One hundred and eighty feet west of the old freight depot, or thereabouts.

Question. What is that map, where has it been kept, and how long has it been in existence?

Answer. This is a map of the La Crosse and Milwaukee railroad from Horicon to Portage City; been in existence, to my knowledge, three years, and probably longer, and has been kept in the office of the company here.

Question. How far west of the western end of the old freight depot at Portage does the present freight depot at that place extend?

Answer. I don't think it extends as far west.

Question. How far short of the distance, then?

Ans. The one burned down was about 200 feet long, and the present one is about 70 feet long.

Question. Can you furnish a copy of this map from station 5028 plus 30 feet east, through the city of Portage to the Fox river, showing the stations by their number?

Ans. I can do this and furnish it by Tuesday morning.

Adjourned to Monday morning, 12th Sept., 1864, at 10 a. m.

168 SEPT. 12, 1864—10 a. m.

Parties present as before.

Cross-examination of Dan. J. Whittemore by Mr. Cary:

Question. Who was the locating engineer of the La Crosse and Milwaukee railroad on the division from Madison to Portage in 1856?

Answer. I was the engineer who located that portion of the road then called the Madison and Portage division. It was located near Portage City April 16, 1857.

Question. Did you locate that division to its junction with the line from Milwaukee to La Crosse?

Answer. I did.

Question. Did you make a plat or map showing that location?

Answer. I caused one to be made.

Question. Do you know that that location, so made by you, was

ratified and adopted by the board of directors of the La Crosse and Milwaukee R. R. Company?

Answer. It was.

Question. Can you make a plat which will show the location of the Portage division where it intersects with the main line, as located by you, showing the canal bridge, the depot at Portage City, the present junction of the Watertown division with the road from Milwaukee to Portage, and the point 75 miles west of the eastern terminus of the La Crosse road in the city of Milwaukee, to be attached as an exhibit to your testimony, and will you do it?

Answer. I can make a map showing the location of the road made by me, its junction with the other road, and the situation of the depot grounds, from my own personal knowledge, and the other points as they appear from the minutes of the engineers in the office.

168 Question. Was the La Crosse railroad, as located and established by the company, one continuous line from Madison, by way of Portage City, to Tomah and St. Croix, and did that line include that portion of the original La Crosse line between the junction of the Portage division, as located by you, and the depot at Portage City?

Answer. Yes. The paper hereto annexed, and marked Exhibit 22, is the map or plat called for and mentioned in my direct and cross-examination.

D. J. WHITTEMORE.

169 Seth C. Baldwin sworn:

Ques. What is your business?

Ans. Superintendent of the Chicago and Milwaukee railway.

Ques. How long have you been engaged in the railroading business?

Ans. As superintendent, about four years and a half; in railroading, about eighteen years.

Ques. From your general knowledge and information in regard to railroading is it customary for railroad men and railroads, when one road is so situated as to act as a feeder to another, for the road receiving such benefit to allow an advantage by way of drawbacks or otherwise to the road so furnishing it business, for the excess of tonage so furnished above what it receives from the other road?

Ans. It has been so in my experience to a greater or less extent; greater in the cases where the feeder has a connection with a competing line.

Ques. Are you acquainted with the line of the La Crosse and Milwaukee railroad from Milwaukee to La Crosse?

Ans. I am so generally.

Ques. Supposing the interest and ownership of that road divided at Portage City so that the eastern end is owned by one in-

170 terest and the western by another, and that the western division furnished a large excess of tonage to the eastern over and above what it receives from it; ought there, on the principle above stated by you, to be a drawback allowed the western for such excess furnished; and if so, what amount?

Ans. It would be customary to do so. If on grain freight, I should say from one cent a bushel to one cent per hundred pounds; that is, from one cent on 60 lbs., to one cent on 100 pounds. I should say, from ten to twenty per cent. on the amount so received over and above a pro rata rate.

Ques. Are you acquainted with what is known as the Horicon road and its connection with the eastern division of the La Crosse road?

Ans. Yes, sir, generally.

Ques. On the hypothesis that the Horicon road furnishes all the cars necessary to transact the business, and deliver their loaded cars at the junction with the La Crosse road, what percentage of the pay for its earnings should the eastern division have for hauling it to Milwaukee and returning the cars?

Ans. Under the circumstances of a competing route, by way of the Northwestern road from Burnett's Station to Chicago, the eastern division could afford to do the business for 30 per cent. for any ordinary through rate.

Examined by Mr. J. S. Brown:

Ques. Are you acquainted with the eastern division of the La Crosse road, extending 95 miles west from Milwaukee, and have you a general acquaintance with its business?

Ans. I am generally acquainted with it, and generally acquainted with its passenger business, and not with its freight business.

Ques. How many locomotives and passenger cars would be necessary to do its passenger business as it was from May last to Sept. 1st, 1864?

(Objected to as irrelevant and immaterial. Objection overruled and exception taken.)

Ans. I should say six locomotives, eight or ten passenger coaches, and four baggage and express cars.

Ques. How many locomotives and how many freight cars were necessary to do the freight business?

171 Ans. I don't know; I am not sufficiently acquainted with its freight business.

Ques. How long is the Lake Shore road from Milwaukee to Chicago?

Ans. About eighty-six miles.

Ques. How many locomotives and passenger cars have you on that road used in connection with the passenger business?

Ans. Eight locomotives for passenger business; eighteen first-class, five second-class coaches, and six baggage and express cars.

Cross-examined for Milwaukee and Minnesota Railroad Company:

Ques. Who is president of the Chicago and Milwaukee Railway Company?

Ans. Alexander Mitchell, of Milwaukee.

Ques. Do you know the road which now goes by the name of the Milwaukee and St. Paul Railway Company?

Ans. I suppose I do.

Ques. Has it any business connections with the Chicago and Milwaukee Railway Company, of which you are now the superintendent?

Ans. There are business connections between them—that is, we give and receive freight to and from and do business with each other.

Ques. Is not Alexander Mitchell, your president, a director in the St. Paul Railway Company?

Ans. I believe he is.

Ques. When the road, giving an excess of tonnage beyond what is received, had but one outlet to the seaboard for such tonnage, could it obtain any drawback for the excess so given to its only outlet?

Ans. I think not.

S. C. BALDWIN.

172 Lindsay Ward, a witness produced, sworn, and examined on behalf of the receiver and of the Milwaukee and St. Paul Railway Company, testified as follows:

Question. Were you the receiver of the Milwaukee and Horicon Railroad Company, appointed by the district court of the United States? If yea, when and how long did you operate said road?

Answer. I was receiver, and operated the road about three years, a little short of three years, commencing on the 19th June, 1860, and operated the road till about the middle of July, 1863.

173 Ques. Was the road operated in connection with the eastern division of the La Crosse road? What was the length of the Horicon road? What was the length of the La Crosse road from the Junction to Milwaukee? To what point did the business of the Horicon road principally tend, and who furnished the cars to transact the business?

Ans. The Horicon road was operated in connection with the eastern division of the La Crosse road; the length of the Horicon road was forty two miles, and the length of the La Crosse road from the Junction to Milwaukee, I believe, was fifty-one miles; the majority of the business of the Horicon road tended to Milwaukee; the Horicon road furnished the cars to transact the business.

Ques. What is a fair compensation to the eastern division of the La Crosse road for hauling the cars of the Horicon road from the Junction to Milwaukee, and returning the cars with the return freight to the Junction?

Ans. I should think 25 per cent. would be a fair compensation.

Ques. Are you acquainted with the La Crosse road from La Crosse to Milwaukee?

Ans. I have been over it, and am some acquainted with it; more with the eastern division than with the western; don't know much about the western division; was never on that part of the road but once.

Ques. On the hypothesis that the interest in and ownership of that road was severed at Portage City, would the usual custom prevailing among railroads require that the eastern division allow a drawback on the excess of tonnage which the western division sends over the eastern division over and above what the western division received from the eastern division?

Ans. As to the custom prevailing among railroads, I do not know what the prevailing custom is.

Ques. From your knowledge of the situation of this road, and your experience in railroading, should there be such drawback allowed the western division?

Ans. I think there should.

Ques. What amount?

174 Ans. I think 20 per cent.

Examined by Mr. Brown:

Ques. What was the amount of the gross annual receipts of the Horicon road while you were receiver?

Ans. I think $125,000 or $130,000 a year.

Ques. What amount per annum was allowed to you for acting as receiver of that road?

Ans. I was allowed for the time I was there $15,000.

Cross-examined by Mr. Fleming for the defendants:

Ques. What percentage of the through rates did you allow the La Crosse road during the time you were receiver of the Horicon road?

Ans. Fifty per cent.

Ques. Did you consider that at that rate you were making the best bargain in your power, at that time, for the Horicon road?

Ans. Yes; at the time I made it I did.

Ques. Did you pay 50 per cent. during the whole period of your receivership to the La Crosse road?

Ans. Yes.

Ques. When did your receivership terminate?

Ans. About the middle of June, 1863.

Ques. Was your contract with the receiver of the La Crosse road renewed every year?

Ans. No, sir; we settled up every month, and I as often protested that I was paying too much.

Ques. Up to the period of the termination of your receivership, could you have got the business done at any lower rate by any other road?

Ans. I think I could.

Ques. Why did you not do so?

Ans. The reason I did not do so is the uncertainty of the time I should stay there. I might be turned out of the receivership any week or month; that was one reason. Another was, if I made another arrangement and turned the freight off the road around by the Northwestern and Watertown roads, which I should have done if I had done anything, and damages had resulted from it, they might have been personal to me.

175 Ques. What damage could have resulted?

Ans. Cars might have been smashed on the other roads and freights might have been injured.

Ques. Do you mean to say that the dangers and damages resulting from a diversion of the trade of the Horicon road were, in your opin-

ion, more than an equivalent to the increased price you paid to the La Crosse road?

Ans. I thought after looking the thing all over, as I was situated, it was not best for me to get into any controversy with the other roads, but if the Horicon road had been my own road I should have made a different arrangement.

Ques. Have you ever been manager of any through road?

Ans. No, sir.

Ques. Have you ever been in any position which would enable you to give an opinion as to when a drawback on excess of tonnage should be allowed?

Ans. I have only been on the Horicon road, and I think that would.

Ques. Do you think the western division of the La Crosse road could have done any through business if the eastern division, in whole or in part, or some other connecting link with the seaboard, had not been constructed?

Ans. I don't think it would very much.

Ques. Would the eastern division, or any other road similarly situated towards the western division, being an only outlet, be apt to allow any drawback?

Ans. No, I think not, being an only outlet.

Re-examined by Mr. Cary:

Ques. From the time the Horicon road was first opened, up to the time you were appointed receiver of it, had it always run in connection with the eastern division of the La Crosse road; and is that what you refer to when you say you were unwilling as receiver to make a change in its business?

Ans. It had always been in connection with the La Crosse road, and if I run it the same and any accident happened, they could not find fault with me.

Re-examined by Mr. Brown:

176 Ques. Are you acquainted with the business of the La Crosse road as it has been done during the last four years, and with the character of the duties of the receiver upon that road?

Ans. Somewhat generally acquainted with them.

Ques. What, in your opinion, would be a fair compensation for the services and responsibility of the receiver on that road; how much per annum?

Ans. Ten thousand dollars per annum, if he was a good receiver and attended to his duties faithfully.

Cross-examined by Mr. Fleming:

Ques. During the time you were receiver did the other road offer to do your business at rates lower than 50 per cent.?

Ans. They gave me to understand that they would do it less; they did not make the offer because I did not conclude to give them the business; the northwestern road offered to pro rate, and the Watertown road proposed, when our cars were brought there, to bring them in so as to make it an object for us.

Ques. In a former answer you have said that by diverting trade

from the eastern division you feared you might involve yourself in some legal responsibility. Could you not by applying to the court have obtained some order which would have freed you from such responsibility and enabled you to avail yourself of the cheaper rate which you say you could have made with the other road and saved the difference for the trust under which you were appointed?

(Objected to, and objection overruled and exception taken.)

Ans. I never asked the court for any such order, and don't know whether I could have obtained one or not.

Ques. On the whole, then, do you mean to say that 50 per cent. was the lowest rate at which you could have done the business?

Ans. I mean to say that 50 per cent. was the lowest rate at which I could get it done on the start; afterwards I could have got it done at a lower rate, but in view of the difficulties attending the change from one road to another I thought it best to let it be as it was.

Re-examined:

177 Ques. In your answer as to the compensation the receiver would be entitled to, did you mean as receiver of the whole road, or of a portion of it?

Ans. I meant as receiver of the whole road.

Ques. Was your answer made with reference to your own knowledge of the duties of the receiver, and of the fact that the western division of that road had passed out of the hands of the receiver in June, 1863?

Ans. I think he ought to have $10,000 a year.

Ques. Do you think the receiver is entitled to the same compensation for operating 95 miles of road as for operating 200 miles of road?

Ans. Can't be quite as much, but still there is not much difference: either would take all his time.

LYNDSAY WARD.

178 Louis J. Higby, being duly sworn:

Ques. At the time Colonel Crocker took possession of the La Crosse road were you in possession of the building known as Higby's elevator and warehouse, and did you claim it by lease made prior to that time?

Ans. I was in possession and did so claim it.

Ques. Are you a party to either of the suits in regard to the La Crosse road?

Ans. I was not.

Ques. Was the elevator constructed by you at your own expense?

Ans. It was.

Ques. What has been about the cost to you of the elevator and warehouse?

Ans. Seventy-eight thousand dollars and a little over.

Ques. What is the average daily expense of operating the elevator and warehouse?

Ans. From $150 to $225 per day; of that about $2,500 per month, or $97 per day, is the expense of taking care of in and out freight at the depot, and billing goods and collecting freight.

Ques. What services do you perform in consideration of your lease free of charge for the railroad, and what is the annual value of those services?

Ans. I take the cars on the track and switch them to the elevator, weigh and unload the cars, send the weights to the office, unload all of the bagged grain at the sheds—flour, pork, and all the merchandise that comes in on the road. We receive in all the merchandise and freight that goes out. We bill all of the out freight, collect all of the freight, and pay over the proceeds to the treasurer; the expense is a little rising of $30,000 per year.

Cross-examined by Mr. Fleming for the Milwaukee and Minnesota Railroad Company:

Ques. Will you state under whose authority you hold and have held the elevator and warehouse of which you have spoken?

Ans. Under Selah Chamberlain, by lease; under the Milwaukee and Minnesota Railroad Company, by lease; under the Milwau-
179 kee and St. Paul Railroad Company, by lease; and under Hans Crocker, under an instrument a copy of which is hereto annexed, and marked Exhibit A A A.

Ques. Had the lease from the Milwaukee and Minnesota Railroad Company to yourself, of which you have spoken, expired at the time you took the lease from the Milwaukee and St. Paul Railway Company?

Ans. It had not, but all those leases were a continuation of the first; no one of them was a full lease except the first one.

Ques. How long had the lease from the Milwaukee and Minnesota Railroad Company to run at the time you took the lease from the Milwaukee and St. Paul Railway Company?

Ans. It had ten years from the time the lease was first given from Chamberlain.

Ques. What was the date of the lease from Chamberlain?

Ans. I think it was in 1858; I am not positive.

Ques. Was not one of the provisions of the lease of the Milwaukee and Minnesota Railroad Company to you that you should erect no buildings except such as were subject to approval of that company?

Ans. I think it was subject to the approval of the superintendent of the road; that I have done.

Re-direct examination by Mr. Brown:

Ques. Will you furnish copies of all the instruments under which you claim?

Ans. Yes, sir; copies of said leases are hereto annexed, marked Exhibits A A A, B B B, C C C, D D D.

L. J. HIGBY.

180 Edwin H. Goodrich, re-examined by Mr. Carpenter, testified as follows:

Ques. Are you still superintendent of the Milwaukee and St. Paul Railway Company?

Ans. I am.

Ques. Since June 13, 1863, have the funds received by that company

arising from the operation of the eastern division been kept separate from the other moneys of the company, or have the same been kept with the other moneys of the said company and used from time to time by that company?

Ans. They have not been kept separate, but have been kept with the other moneys of the company and used from time to time as they were received.

Ques. In the items of the accounts heretofore filed, how was the item $202,311 16 made up?

Ans. I have already explained how the first part of the account was made out, and the second was made out upon the same basis.

Ques. In paper marked "Continuation of Exhibit E," filed April 13, 1865, is an item "use of rolling stock, $36,118 86." Does this item contain any charge for use of rolling stock subsequent to Sept. 1st, 1864?

Ans. It does not, as I understand it.

Ques. Then I understand that Exhibit E, and continuation of Exhibit E, show the amount charged the eastern division for the use of rolling stock from June 13, 1863, to Sept. 1, 1864. Is this correct?

181 Ans. That is as I understand it.

Ques. Since Sept. 1, 1864, where has the rolling stock been used which was on the old road when the receiver was appointed.

Ans. It has been used on the road between Milwaukee and La Crosse, by the way of Watertown, Columbus and Portage City, being the western division and the Watertown road.

Ques. Since Sept. 1, 1864, what proportion of the rolling stock purchased by the receiver has been used on the eastern division, and where has the balance been used?

Ans. I cannot answer the question definitely. I should estimate that two-thirds of that purchased by the receiver, or its equivalent, has been used on the eastern division, and the balance has been used on the western division and the Watertown railroad, or laying still.

Ques. Has any of the original rolling stock been used on the Horicon road since June, 1863?

Ans. Yes.

Ques. To what amount or to what extent?

Ans. I cannot tell. Since June 13, 1863, the Milwaukee and St. Paul Railway Company have operated the Horicon road and the western division, and the Watertown road, and have used the original rolling stock wherever they required it.

Ques. Can you furnish such statement of the mileage on the western division from July 1, 1864, to September 1, 1864, as you furnished from June 13, 1863, to July 1, 1864, and which is marked K K?

Ans. I will undertake to do so if you will furnish me a copy of Exhibit K K, already rendered.

Ques. Should the charges for the use of the rolling stock for July and August, 1864, be at the same rates as testified to by you, from May, 1863, to June 1, 1864?

Ans. I think the charges made for the use of rolling stock during those months were at the same rates.

Ques. Can you furnish a statement of the mileage of rolling stock on the western division from Sept. 1, 1864, to March 1, 1865?

Ans. I can furnish an approximate statement, but not a correct one, and will do so.

182 Ques. Can and will you do the same thing for mileage of rolling stock on the Watertown division?

Ans. I will undertake to do so.

Ques. From Sept. 1, 1864, to March 1, 1865, what would be a fair compensation for use of rolling stock per mile on the western division and Watertown division. Distinguish in your answer between locomotives and the different kinds of cars?

Ans. Same rates as charged for same service from May 7, 1863, to June 1, 1864, viz: Locomotives, 25 cents; passenger cars, 5 cents; baggage and mail cars, 3 cents; freight cars, 2 cents.

Ques. In the account, Exhibit E and its continuation, was the rolling stock charged at higher rates than in your last answer mentioned?

Ans. I think there has been no change.

Ques. In paper marked "Exhibit C" the mileage of engine upon the western division is stated 739,747 miles. Now for that term would the reasonable rent for other rolling stock on that division be equal to the use of locomotives or greater or less?

Ans. My opinion is, that the mileage of the cars hauled in each train is equal in value to the mileage of the engines that haul them.

Ques. If the western division be charged for the use of rolling stock from June 11, 1860, when the receiver was appointed, to January 13, 1862, upon the theory that all the original rolling stock belonged to the eastern division, except the 40 box cars, mentioned in the land grant decree, would there be any net earnings belong to the western division during that time?

(Objected to, because the question is immaterial, and because up till the time of the sale of the western division the road and rolling stock was an entirety. Objection overruled and exception by Mr. Brown.)

183 Ans. My opinion is, that upon such a basis of accounting, that the western division would not have shown any net earnings, but I have not made any examination of the business of that division during that period, and make the statement from my recollection of what it was.

Ques. About how many cords of wood per year are burned upon the eastern division?

Ans. I am not able to state. (Question waived.)

Ques. Will you state whether the item in Exhibit E, "fuel, $37,989 74," and item in paper marked "Continuation of Exhibit E," "fuel, $18,003," show the fuel purchased or the fuel consumed on the eastern division?

Ans. They show the value of fuel consumed.

Ques. In the inventory of property on the eastern division, when

taken possession of by the St. Paul Company, there is shown 13,903 cords of wood. What was that worth per cord at that time?

Ans. From recollection, I should state it worth $1 75 per cord.

Ques. Will you furnish the auditor with statement showing the total amount of repairs of all the rolling stock from June 1, 1864, to March 1, 1865, deducting the amount which has already been charged to the eastern division in the accounts returned to the auditor?

Ans. Yes, I will undertake to, if you will furnish me copies of the statements already made.

Cross-examined by Mr. Brown:

Ques. If the ownership of the rolling stock should be held to lie in the eastern division owners, and they are to be credited with the value of the use of the rolling stock, should they not also be charged with the cost of keeping it in running order?

Ans. They should.

Ques. What proportion will the cost of repairs of rolling stock bear to the value of the use of rolling stock as charged?

Ans. About the same. An examination of that matter was made about a year since, and I think the result was about 8 per cent. in favor of the use. In this I may be mistaken.

Edwin H. Goodrich, examination continued by Mr. Carpenter, May 6, 1865, testified as follows:

184 The witness here presents a statement, marked Exhibit Y Y Y, and states that the same is a statement showing the mileage of rolling stock on the western division, July 1st, 1864, to September 1st, 1864.

The paper now presented, and marked Exhibit Z Z Z, is a statement showing mileage of rolling stock on the Milwaukee and St. Paul Railway from Sept. 1, 1864, to March 1st, 1865. The paper now presented, and marked Exhibit No. 1, is a statement showing total cost of repairs of rolling stock, eastern and western divisions, June 30, 1864, to September 1, 1864. Milwaukee and St. Paul railway, and eastern division from September 1, 1864, to March 1, 1865. The paper now presented, and marked Exhibit No. 2, is a statement of cost of repairs of rolling stock Milwaukee and St. Paul railway, from Sept. 1, 1864, to March 1, 1865. The paper now presented, and marked Exhibit No. 3, is a statement of cost of repairs of rolling stock charged western division, Milwaukee and St. Paul railway, June 30, 1864, to Sept. 1, 1864. (The parties here filed the stipulations marked respectively Exhibits No. 4, 5 and 6.

Ques. (By Mr. Carpenter.) In the charge for fuel in operating the eastern division, at what price per cord has the wood been charged?

Ans. I can't tell you. It has been charged at its estimated cost. I can furnish a statement of the cost at which the wood has been charged on the eastern division, and will do so.

Ques. About the time the St. Paul Company took possession of the eastern division, was there an inventory made of the rolling stock on the whole road, except the 40 box cars mentioned in the land grant decree, and of the personal property on the eastern division?

Ans. There was a general inventory made. I cannot state as to the 40 box cars.

Exhibit No. 7 is admitted by the parties to be a copy of the inventory mentioned in the above answer, and is presented in evidence. The erasures in red ink are to be disregarded.

Ques. In your former testimony you referred to the extension of the repair shops at Milwaukee; would this extension have been ne-
185 cessary, regarding the eastern division as a separate road?

Ans. It would not.

Ques. In your former testimony you gave as the total repairs of all the rolling stock from June 13, 1863, to June 1, 1864, on the main line, as $139,638 03. Did this include a sum of $28,423 99, charged to the eastern division in Exhibit E before the auditor?

Ans. I cannot state from recollection. I will ascertain and state.

Ques. Does the account for the repairs of rolling stock, eastern and western divisions, June 30, 1864, to Sept. 1, 1864, and Milwaukee & St. Paul Railway Company, and eastern division, Sept. 1, 1864, to March 1, 1865, giving as the total cost of such repairs a sum of $208,820 63, include the repairs to rolling stock of the Horicon & Watertown roads, and any other rolling stock that you have had on the road?

Ans. I understand it does.

Ques. Can you furnish the statement of the amount of each kind of rolling stock on the Milwaukee and La Crosse railroad, June 11th, 1860; also a similar account of the amount on hand June 11th, 1863; also a similar statement of the amount acquired from the Milwaukee and Western Railway Company; also a similar statement of the amount acquired by the purchase of the Milwaukee and Horicon railroad; also a similar statement of the amount built or bought by the Milwaukee and St. Paul Railway Company since June 13, 1863?

Ans. I can; the paper marked Exhibit No. 8 is a statement of the amount of rolling stock on hand June 11th, 1863; the paper marked Exhibit No. 9 is a similar statement of the amount of rolling stock on hand June 11th, 1863; the paper now presented and marked Exhibit No. 10 is a note explanatory of the two statements marked Exhibits Nos. 8 and 9; the paper marked Exhibit No. 11 is a statement of the rolling stock acquired with the Milwaukee and Watertown and the Milwaukee and Horicon railroads, and the rolling stock bought and built by the Milwaukee and St. Paul Company since June 13th, 1863.

Ques. Was there any other rolling stock in use on the Mil-
186 waukee and St. Paul railway, and on the eastern division of the Milwaukee and La Crosse railroad, from June 13th, 1863, up to March 1st, 1865?

Ans. There were 40 cars belonging to the Minnesota Central Railroad Company in use on said roads from about the 1st of July, 1864, to March 1st, 1865.

Ques. In Exhibits Y Y Y and Z Z Z, you have given a statement of the mileage of the rolling stock of the Milwaukee and St. Paul Railway Co., from September 1st, 1864, to March 1st, 1865, and also from July 1st, 1864, to September 1st, 1864. Do these statements

include the mileage of all the rolling stock which you have in your answers heretofore described as belonging to the old La Crosse and Milwaukee railroad, the Horicon railroad, and the Watertown railroad?

Ans. Exhibit Y Y Y shows the mileage on the western division made by parts of all the stock referred to in Exhibits Nos. 8, 9, 10, and 11, and the 40 box cars of the Minnesota Central Railway Company, from July 1st, 1864, to September 1st, 1864; and Exhibit Z Z Z shows the mileage on the Milwaukee and St. Paul railway by all the stock referred to in Exhibits Nos. 8, 9, 10 and 11, and the 40 cars belonging to the Minnesota Central Railway Company, from Sept. 1st, 1864, to March 1st, 1865, as I understand them.

Cross-examined by Mr. Brown on behalf of the receiver:

Ques. Were the buildings and improvements erected on the eastern division while Mr. Crocker was receiver, and referred to his accounts, erected under your supervision?

Ans. They were.

Ques. Were they necessary and judicious improvements at the time they were erected?

Ans. They were; as my recollection is, that they were projected and commenced previous to the time that the Milwaukee and St. Paul Railway Company determined to construct a railroad between Portage City and Columbus and Brookfield and Milwaukee for the purpose of making the main line of railroad from Milwaukee and La Crosse by way of Watertown and Columbus.

187 Ques. Was the eastern division then operated as a part of the main line between Milwaukee and La Crosse?

Ans. At the time the buildings were projected and commenced it was; and it was so for several months afterwards, and until the 1st of September, 1864.

Cross-examined by Mr. Cary:

Ques. Can you furnish a statement which will show the entire gross earnings of the eastern division of the La Crosse road, excluding therefrom all business brought on to it from the western division and the Horicon road, from July, 1863, to March 1st, 1865?

(Objected to as irrelevant and impertinent. Objection overruled and exception taken.)

Ans. I don't know that I can, but I will undertake to furnish it from the books of the company.

MAY 10, 1865.

Edwin H. Goodrich continued:

In answer to the question as to the price at which wood used on the eastern division, the witness says, that from the first of June, 1863, to the first day of June, 1864, the price was $2 50 per cord. From the 1st of June, 1864, to the 1st of January, 1865, the price was $3; and from the 1st of January, 1865, to the 1st of March, 1865, $3 50.

The witness now states that he has examined, and finds that the item $208,820 63, repairs of rolling stock before inquired about, does include the repairs of all the rolling stock belonging to the Milwaukee and St. Paul Railway Company and all they claim to own, and

no other, being all the rolling stock on the road from Milwaukee to La Crosse, and all on the Watertown and Horicon divisions.

Ques. Has any of the rolling stock which has been bought or built by the Milwaukee and St. Paul Railway Company been sold or disposed of; and if so, when, and what portions thereof?

Ans. 50 box cars built by the Milwaukee and St. Paul Railway Company were sold in December, 1864, near the last of the month; also two passenger cars, built by said company, were sold in
188 the fall of 1864—I think in November; and also one of the passenger cars, purchased with the Horicon division, was sold in September or October, 1863; Exhibit No. 22 shows what amount of the sum stated in Exhibit No. 6, filed May 6th, 1865, was expended upon locomotives, passenger cars and freight cars respectively.

Ques. Does the 450 freight cars, given as a part of the amount of the original rolling stock, include the 40 box cars described by numbers in the land grant decree?

Ans. I understand that it does.

Ques. Does the statement of the amount of repairs of rolling stock in Exhibit M M include the amount of $28,423 99, charged the eastern division for repairs of locomotives and cars in Exhibit E?

Ans. It does.

EDWIN H. GOODRICH.

The examination of Hans Crocker on the part of the Mil-
189 waukee and Minnesota Railroad Company, taken April 13, 1865.

Hans Crocker, recalled and examined as a witness on the part of Alexander Fleming and the Milwaukee and St. Paul Railway Company, having been previously sworn, testifies as follows:

Ques. During the period of your receivership have the earnings of the eastern division of the La Crosse road been kept separate from or mingled with the earnings of the western division?

Ans. I have once or twice answered this question, and fully explained how the accounts were kept, and refer to my previous answers. The accounts were kept together until the roads were separated; after that they were kept separate.

Ques. Were the moneys and earnings of the eastern division paid to you after possession taken by the St. Paul Company, and as it was earned, and in what times and in what amount?

Ans. The earnings were paid in to Mr. Cary, the cashier of the St. Paul road, and are held by him, the St. Paul road paying me from time to time as I need money. I also refer to my previous answers explaining how the thing was done.

Ques. What amount of such earnings are still held by the St. Paul Company and not paid over to you?

Ans. I have not got just the figures here, but there was about $108,000 on 1st day of March last.

Ques. Can you, and will you, and when, furnish a state-
190 ment of the mileage of the rolling stock of the La Crosse road,

(except 40 box cars,) from the 1st of September, 1864, to the 1st of March, 1865, as well over the Watertown road as on the western division?

Ans. I think I can do it, and if I can I will do it. The paper now presented, and marked "Continuation of Exhibits E," is a continuation of the accounts contained in Exhibits E, heretofore presented, from Feb. 30, 1864, to July 28, 1865.

Adjourned to 28th April, 10 a. m.

Hans Crocker's examination continued:

Ques. Is the amount of $38,240 35, shown by your accounts as being on hand Feb. 28, 1865, actually on hand, and in your hands?

Ans. That is the balance represented on hand on that day in cash, or in items equivalent to cash.

Ques. How much of this sum was actually in your hands in cash on that day?

Ans. I can't state precisely the amount, but I think it was not far from $10,000 at that time.

Ques. What were the items which you say were equal to cash which made up the balance?

Ans. One item of $2,000 which I have paid Cary and Pratt in cases where I have employed them. One item is for some $800 paid to Erasmus Taylor, of Portage, for legal services. One item was $800 paid to Judge Levi Hubbell for attorney's fees. These payments were paid to attorneys employed by me as receiver. The balance is money that I had used myself as a part of my compensation as receiver.

Ques. When did you take or use this balance?

Ans. From time to time since I have been receiver.

Ques. Has there been any order of court, or of a judge of the court, fixing your salary, or authorizing you to take or use for your own benefit any portion of this fund?

Ans. Not to my knowledge.

Ques. Have you taken and used from year to year about what you supposed your compensation should be?

Ans. I have taken and used from time to time what I needed,
191 without reference to what the court would allow.

Ques. Can you state how much you have taken in each year, from 1860 to the present year?

Ans. No, I cannot tell here without my memorandum and books. In my office I can show just what I received in each year.

Ques. Will you present your memorandum and books, showing how much you have taken from this fund and used for your own benefit in each of the years above mentioned?

Ans. I will present a statement as soon as it can be made out, showing the sums taken in each year.

Ques. What, in your opinion, would be a reasonable compensation to you for your services as receiver of the Milwaukee and La Crosse railroad, from Milwaukee to La Crosse, from the time of your appointment to June 12, 1863, when you passed the road over to the St. Paul Company?

Ans. $10,000 a year.

Ques. Did the receivership of the western division engross as much of your attention as that of the eastern division?

Ans. It was all one road and one interest, and I don't know but one occupied as much time as the other. It was all one thing.

Ques. How many hours each day, on an average, were you actually employed about your duties as receiver from your appointment to June 12, 1863?

Ans. I can't tell; sometimes all day, and sometimes three hours a day. The winters I have spent in Madison on railroad matters.

Ques. About what interest were you employed at Madison during the winters?

Ans. Aiding in protecting the general railroad interests of the State, such as increased taxation, *pro rata* tariff, &c.

Ques. Do you mean that you were employed there as lobby man?

Ans. I went there as receiver of the La Crosse road, to protect the interest of that road.

Ques. In what way were the interests of that road involved
192 at Madison?

Ans. Each of those years attempts were made to increase the tax on railroads, and to pass *pro rata* tariffs, which would have been very injurious to the railroads of the State.

Ques. Have you not in each of those years exerted your efforts and influence at Madison to defeat legislation which was sought by the Milwaukee and Minnesota Company?

Ans. No.

Ques. Have you not used your efforts and influence to procure legislation that was detrimental to the said Company?

Ans. I have not.

Ques. Were there not two bills pending in the legislature at the session of 1863, to incorporate the purchasers of the western division, and was not your name inserted as one of the corporators, and did you not aid and advise their passage, or the passage of one of them?

Ans. There were such bills pending during that session. I was named as a corporator without my knowledge or consent. I first saw the bill in the hands of Senator Hopkins, of Madison. I immediately went to Mr. Finch, the attorney of the western division, then at Madison, and asked him to strike my name out of the bill, as I had no interest in the road either as a bondholder, stockholder, or otherwise. He replied that he did not feel at liberty to do so, as the bill had been prepared in New York and had been sent out, and he desired to pass it as they had sent it to him. I told him at the same time that it was utterly impossible to pass the bill. About that time I saw Mr. Sharpstein, of the assembly, and Sat. Clark, of the senate, and requested them, in case the bill should ever come before either house, to have my name struck out.

Ques. During your absence at Madison was any one employed to act in your stead at Milwaukee, or were any additional persons employed during your absence?

Ans. No. Goodrich attended to the business while I was gone. He was in regular employ, the same as when I was at home?

193 Ques. How much, in your opinion, would be a reasonable compensation per year for your services as receiver from June 13, 1863, to this time?

Ans. $5,000 a year.

Ques. Since June 13, 1863, what has been the nature and character of your duties, and what, that is, how much, have you done as such receiver?

Ans. Since that time the labor and responsibilities have been light in regard to what they were before.

Ques. What and how much have you had to do as receiver since June 13, 1863?

(To this question Mr. Brown objects, because the same question has been put and repeatedly answered, and the limited time allowed under the order of the court to close this whole investigation makes the needless repetition of the same question vexatious and onerous. Objection overruled, and Mr. Brown excepts.)

Ans. Except for the time the whole road was in the possession of the St. Paul Company (from June 13, 1863, to May 1, 1864) my duties were the same as when I had charge of the entire road, except the receipts and responsibilities have been less.

Ques. Do you know whether the St. Paul Company has kept the funds received by it from the eastern division separate from other moneys, and on hand?

Ans. I cannot answer—don't know anything about it. I believe they have not.

Cross-examined by Mr. Brown:

Mr. Brown offers a certified copy of an order of court of June 12, 1863, which is marked Exhibits R R R. Also certified copy of judgment rendered in case of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company, which is marked Exhibit S S S. Also copy of decree in case of Newcomb Cleveland *vs.* The La Crosse and Milwaukee Railroad Company and others, which is marked Exhibit T T T. Also certified copy of an order of the court in the case of Greene C. Bronson and James T. Soutter, trustees, *vs.* The La Crosse and Milwaukee Railroad Company and others, dated June 12, 1863, which is marked Exhibit U U U. Mr. Brown also pre-

194 sents and files petition of receiver for compensation, marked V V V.

Hans Crocker cross-examined by Mr. Brown:

Ques. Your attention was called yesterday to the balance in your hands on the 28th of Feb., 1865, and to certain portions of the balance which had been used by you. Was the amount taken by you in any one year equal to what you supposed, under the most unfavorable circumstances, the court would allow you for that year?

Ans. It was not.

Ques. Did you consider yourself entitled to use, within safe bounds, a part of what you supposed would be your compensation, holding yourself responsible to refund in case so ordered by court?

(Objected to because his right to take the money is settled by law and not by Mr. Crocker's opinion. Objection overruled and exceptions noted.)

Ans. I did.

Ques. In fixing the amount of compensation for services at $10,000 per annum, did you take into consideration any responsibility which might accrue to you beyond that of honestly discharging your duties, or any annoyance growing out of suits against you, or litigation with you in the character as receiver?

Ans. I did not.

Ques. Did you pay the amounts directed by the order of the judge of the district court to be paid on the Cleveland judgment in good faith, and without the slightest impression that you had the power to refuse, or that it was your duty to pass upon and overrule the judge of the district court?

Ans. I paid them in good faith, and supposed I was bound to obey the orders of the court.

Ques. Are you aware that the Minnesota Railroad Company contend here that you must refund that money and are not protected by those orders?

Ans. I have so understood such to be their position.

Ques. With liabilities growing out of such a claim, would $10,000 a year be any suitable compensation for the mere risk which a receiver runs?

195 Ans. Most certainly it would not.

Ques. How many times have you been sued as such receiver in the State courts for your acts as such receiver?

Ans. Ten or twelve times in courts of record, and frequently as garnishee before some justice of the peace.

Ques. Have you been arrested for larceny for taking possession, as receiver, for what is known as the Horicon depot, belonging to the La Crosse road?

Ans. Mr. Goodrich and myself were arrested on complaint of Jesper Vliet for stealing the Horicon depot, were held to bail, stood trial, and were honorably acquitted. Vliet claims to own the depot as agent of the Horicon road. I took and kept possession of it as receiver, and that it belonged to the La Crosse road.

Ques. Were you at any time enjoined in the State court from running the cars through Portage?

Ans. I was.

Ques. Were you directed by counsel, Mr. Cary, to continue running your trains, notwithstanding the injunction, and did you do so?

Ans. I was, and did.

Ques. How many suits are now pending against you as receiver, and for what amounts?

Ans. There are three: two for killing men, and one for breaking a man's leg, which has since been amputated. The damages claimed in the three cases amount to $20,000. Exhibit W W W contains a list of these cases, where pending, and the amount claimed in each.

Ques. State whether there are any, and what, particular circum-

stances attending the litigation in this case that rendered the position of receiver extraordinary disagreeable.

Ans. It has been from the first a bitter contest between different parties claiming to own the road, or different parts of the road, each party appearing to be dissatisfied with the management of the road. These different claims, and the litigation which has lasted ever since I have been receiver, have involved me more or less in their
196 personal quarrels, not intending to take any part in them myself. From the day I was appointed receiver up to this time I have been anxious and desirous to have these matters compromised and settled, and have done everything in my power to do so.

Ques. Did the order of the court, putting the St. Paul road into possession, to which reference has been made, increase or diminish the annoyance of your position?

Ans. It increased them.

Ques. If you were certain that all the disputed items in your account would be allowed as claimed by you, would you, with your present knowledge of the difficulties and labor of the receiver, accept the same office for $10,000 a year.

(Objected to as speculative, immaterial, and irrelevant. Objection overruled and exception noted.)

Ans. I most certainly would not.

Ques. What has been the gross amount of receipts on that road by you as receiver during the whole time you have been receiver up to the 28th February, 1865?

Ans. $4,287,876 52.

Ques. What have been expenditures during the same time?

Ans. The expenditures have been the same amount, less the amount mentioned in my direct examination as being on hand.

Ques. I wish to refer you to your explanation in your direct examination as to the amount on hand and the items treated by you as cash. Were the payments mentioned by you as having been made to attorneys made in suits, affecting you as receiver, and the interests of the road, and were the parties fairly entitled to the amounts so paid them?

Ans. Yes, they were.

Ques. Will you give the reason why these payments were not made a part of your account at the time, so as to diminish the apparent balance in your hands?

Ans. In the case of Cary & Pratt it was money paid on account for services rendered. I wished to get their whole account before I settled with them, and then wished, as I told Mr. Cary, to have the account allowed or passed upon by the court. It was understood that they were to repay if the amount was not allowed.

197 Ques. Were you consulted in advance, or did you, in any way, have anything to do with the application of the St. Paul Company to be let into the possession of the eastern division?

Ans. I knew of the application, but was not consulted, and had nothing to do with it, and knew nothing about the order until it was made.

Ques. Had you any other motive in complying with the order except the belief that you were bound so to do?

Ans. None whatever.

Ques. Did Mr. Russel Sage represent himself to you as being the agent for the complainants in the second mortgage suit and for a majority of the bondholders?

(Objected to as irrelevant and immaterial by Mr. Jenkins. Objection overruled and exception noted.)

Ans. He informed me that he was the attorney of the complainant, and that he represented $800,000 of the $1,000,000 of the bonds.

Ques. Did he consent to your surrender of the road to the St. Paul Company under that order, and to your subsequent arrangement with that company, mentioned in your testimony?

(Objected to by Mr. Jenkins as irrelevant and immaterial. Objection overruled and Mr. Jenkins excepts.)

Ans. He was present when I delivered possession of the road to the St. Paul Company. In relation to the arrangement referred to, he has frequently said to me that it was the best arrangement that could be made for the eastern division.

Adjourned to Monday, May 1, at 2 p. m.

H. CROCKER.

198 James C. Spencer, a witness produced, sworn and examined on behalf of Hans Crocker, receiver, May 2, 1865, testified as follows:

Ques. Are you the manager of the Milwaukee and Prairie du Chien railroad, and how long have you been connected with railroads?

Ans. I am; and have been connected with railroads since 1848.

Ques. How long have you been engaged in the management of the Milwaukee and Prairie du Chien railroad?

Ans. Since January, 1861.

Ques. Have you made yourself familiar with the general business resources of Wisconsin, and with the routes of its railroads, and the general character of their business?

Ans. Yes.

Ques. Have you ever been over what is generally known as the eastern division of the La Crosse road—that is, from Milwaukee to Portage?

Ans. I have been over it twice.

Ques. Are you aware that what is known as the St. Paul Railway Company is now in possession of the western division and have a line from Milwaukee to Portage of their own?

Ans. I am.

199 Ques. Taking it for granted that the western division of the La Crosse road from Portage belongs to the St. Paul Company, and considering the eastern division as a separate road running from Milwaukee to Portage, what, in your opinion, is the fair value per mile of that division?

(Objected to by Mr. Fleming as irrelevant. Objection overruled and exception noted.)

Ans. The thing is worth what it will fetch. The prices of the securities of the Milwaukee and Prairie du Chien Railway Company would purchase the road for about $23,000 per mile. Probably the Northwestern might be purchased for $20,000 per mile. We have earned 7 per cent. on a cost of $31,000 per mile, but have never paid interest on over $22,000 per mile. I look on the whole Prairie du Chien road as about the same in value as the old La Crosse road—that is, to the income it would bring. Both roads are dependent on the business out of the State, or west of the river, on account of the frequent failure of the crops in the State. With a good grain crop, the local business is large and profitable; with loss of crop, the local business is a mere nothing. As it was last year, our road from here to Madison could not have paid on $20,000 per mile. My own conviction is, that a local road extending out 95 miles into the State, and terminating there, would not pay interest, year after year, on over $20,000.

Ques. Would the fact that a rival road like St. Paul exists, touching it at one point at Portage, and having a line extending through to the river, increase or diminish the value of the road?

Ans. It must of course diminish the value, having a competing line from the termination.

JAMES C. SPENCER.

Adjourned to Thursday, 4th, at 10.

200 Alexander Mitchell, a witness produced, sworn, and examined on the part of the Mil. and Minnesota Railroad Company and Alexander Fleming, May 5, 1865, testified as follows:

Question. Are you a director in the Milwaukee and St. Paul Railway Company?

Answer. I am.

Question. Since what time?

Answer. I should think I came into the board within a few months after it was organized.

Question. When was the Milwaukee and St. Paul Company organized?

Answer. About two years ago.

Question. Do you say positively that you was not made a director of the company on its organization?

Answer. Yes; I think I went into the board a short time after it organized.

Question. Have you no memorandum by which you can determine when you went into the board?

Answer. No; you can tell by referring to the minutes of the company.

Question. Can you, and will you, furnish authenticated extracts from the minutes of the board, showing when you were made a director?

Answer. The secretary can furnish that information to any one who chooses to apply for it.

Question. Can you give a list of the directors of the St. Paul Company?

Answer. I can give you the names of some of them. I don't know that I can all; at least they were directors, and still are, unless they have resigned within a few days.

Question. Was Russell Sage made a director on the organization of the company?

Answer. My impression is he was, but I am not sure on that.

Question. Is he now president of the St. Paul Railway Company?

Answer. I understand that he is.

Question. Is Geo. Smith, of Chicago, a director of the St. Paul Railway Company?

Answer. Mr. Smith was a director, but I understand that he tendered his resignation prior to leaving for Europe last December.

Question. How many directors are there of the Mil. and St. Paul Railway Company?

Answer. I think thirteen compose a full board.

ALEX. MITCHELL.

201 James S. Brown, re-examined on behalf of the receiver, testified May 6th, 1865, as follows:

The account here presented and marked Exhibit No. 12 was made out by me against the receiver for services as his attorney in matters connected with this account, and also for advice in the management of his affairs as receiver. Since about the first of August last,
202 with the exception of the time taken up by the adjournment, from about the middle of November until the latter part of March last, there have been but a few days at any one time in which I could be absent, on account of either actual hearing before auditor or adjournments for hearing, although very frequently upon the day of adjournment nothing was actually done in the case. I think a very low charge is $1,500. The other item of $100 is for assisting in trying the case of Rothe *vs.* Crocker, receiver, for which $100 is a very reasonable charge. The services of myself or some one was, in my opinion, necessary for the receiver.

JAMES S. BROWN.

Alanson Cary, a witness produced, sworn, and examined May 8, 1865, testified as follows:

Ques. Are you secretary of the Milwaukee & St. Paul Railway Company?

Ans. I am.

Ques. Can you furnish a statement from the minutes of the board of directors of said company, showing who have been the president and directors of said company from its organization to the present time, and the time when they respectively became and ceased to be directors, and who constitutes the present board of directors?

Ans. Yes. The paper here produced and marked Exhibit No. 13 is such a statement, showing all called for by this question, and is taken from the minutes of said board of directors.

ALANSON CARY.

203 Wallace Pratt, a witness produced and heretofore sworn and examined on behalf of the Milwaukee and St. Paul Company, being re-called and re-examined May 6, 1865, by Mr. Cary, testified as follows :

Question. Are you one of the firm of Cary & Pratt, practicing attorneys, in the city of Milwaukee ?

Answer. I am.

Question. Did you make out and present that bill ?

Answer. I did.

Question. Will you state the facts in regard to said charges ?

Answer. The services for which charges are made in this bill were all rendered by the firm of Cary & Pratt for H. Crocker, receiver, and at his request, and the amounts charged are, in my opinion, a reasonable compensation for the services rendered. The bill mentioned is here put in evidence and marked Exhibit X X X.

WALLACE PRATT.

Mr. Cary, on behalf of the Milwaukee and St. Paul Company, here presents as evidence the paper marked Exhibit No. 14; also the paper marked Exhibit No. 15.

MAY 9, 1865.

204 Mr. Carpenter files stipulation marked Exhibit No. 16.

Mr. Carpenter offers a printed copy of a record in the case of Howard *vs.* The La Crosse and Milwaukee Railroad Company and Selah Chamberlain.

205 Objected to by Mr. Cary on behalf of the Milwaukee and St. Paul Railway Company, and by Mr. Brown on behalf of the receiver, on the ground that the same is irrelevant and immaterial, but not for the reason that the same is not certified by the clerk. Objection overruled, and Messrs. Brown and Cary except. Said record is marked Exhibit No. 17.

Mr. Carpenter offers the record in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter and others, and against the St. Paul Railway Company, together with the opinion of the Supreme Court and its mandate thereon.

Objected to by Mr. Brown on behalf of the receiver : 1. Because it is the mere declaration of a party in interest. 2. Because the opinion is in a case to which the receiver was not a party, and therefore could not be affected. 3. It is irrelevant and immaterial.

Mr. Cary, on behalf of the Milwaukee and St. Paul Railway Compand, on the ground that it is irrelevant and incompetent. But neither objects upon that they are not properly authenticated. Objection overruled, and Messrs. Brown and Cary except.

Record received and marked Exhibit No. 18 ; opinion of the court received and marked Exhibit No. 19 ; and the mandate received and marked Exhibit No. 20.

Mr. Cary offers in evidence the answer of the St. Paul Company to the bill of complaint contained in the record marked Exhibit 18.

Mr. Carpenter objects that it is incompetent evidence. Objection overruled and exception by Mr. Carpenter. Answer marked Exhibit No. 21.

206 Matt. H. Carpenter, recalled on behalf of the Milwaukee and Minnesota Railroad Company and A. Fleming, and re-examined, May 10, 1865, testified as follows:

I prepared and filed the exceptions on the part of the Milwaukee and Minnesota Railroad Company, and Graham and Scott, to the marshal's report of sale, which sale was afterwards pretended to be confirmed by the district court in the land grant case, in May, 1863. I did not know at that time, nor until long after the said confirmation of the said sale, that the marshal had in fact pretended at that
207 sale to sell any of the rolling stock on the La Crosse railroad except the 40 box cars, and the proportion of stock purchased by the receiver, as mentioned in the land grant decree. I had never read the marshal's advertisement, or report of sale, to see what the marshal advertised for sale, or pretended to sell. I intended by the exceptions to object to the sale as indefinite and uncertain, because it was not ascertained in that cause what proportion of the stock purchased by the receiver was ordered to be sold by the decree, or what particular franchises of the old company were to be thus sold.

(Mr. Cary objects to the testimony so far as the witness attempts to state what his intention or object was in filing said objections, and objects to the whole testimony as irrelevant. Objection sustained and Mr. Carpenter excepts.)

Cross-examined by Mr. Cary:

Ques. Did you act as solicitor and counsel for the Minnesota Company in that foreclosure, and that as such counsel prepare the motion, papers, and serve upon the complainant's counsel at one or more times during the pending of that advertisement to postpone the sale?

Ans. I was the only solicitor and counsel for said company, so far as I know. (I think Judge Hubbell advised with me, and may have signed some papers as counsel.) I know the marshal had advertised a sale under the land grant decree, and I think I did serve and file papers to prevent or delay the sale. I had full knowledge of the time at which the sale was to take place, but I had never read the advertisement to ascertain what property was advertised for sale, acting always upon the belief that the advertisement and sale followed the directions of the decree.

(Mr. Cary objects to the last clause of the answer as not responsive to the question. Objection overruled and Mr. Cary excepts.)

Ques. Did you file in that case a bill of review, and apply for an injunction immediately before the sale took place?

Ans. I did, and argued the motion before the two judges of the circuit court, and was defeated. At the time of drawing these papers I do not recollect whether I had or not any copy of the
208 advertisement, but presume that I directed, and that my clerk or client did produce and attach a copy of the advertisement to the bill of review; the record will show. I don't remember whether I was present at the sale or not; I have no recollection of it. I don't recollect that I had any copy of the report of sale before me when I drew the exceptions. I think I did not argue the exceptions before the district court; my recollection is that I did not. When

the question came up on the confirmation of the sale, in the district court, I was present, but my recollection is that I made no oral argument myself, and I think I did not hear what arguments were made by others.

MATT. H. CARPENTER.

209 Benjamin K. Miller, a witness produced, sworn, and examined on the part of the receiver, testified as follows:

Adjourned to May 11th, 11 a. m.

Ques. Are you one of the firm of Finches, Lynde & Miller?

Ans. I am.

Ques. Do you recollect the fact of the existence of a judgment in favor of Graham and Scott *vs.* The La Crosse and Milwaukee Railroad Company, and one of Cleveland against the La Crosse Railroad Company?

Ans. I know of the judgment of Cleveland, for we are the attorneys in the case. I know by hearsay that there is such a judgment in favor of Graham and Scott.

Ques. Have you had any conversation with the attorney of the Milwaukee and Minnesota Railroad Company, Mr. Carpenter, or have you had conversations in which he took part, relating to payment by order of court upon the receiver of any judgment liens?

(Objected to as incompetent and irrelevant. Overruled and exception.)

Ans. I have had a conversation with Mr. Carpenter upon the subject, and I heard a conversation upon that subject.

Ques. Please state, so far as you can recollect, all that was said and all that was done with a view to such payments, or in relation to such payments.

210 (Objected to as above. Overruled and exception.)

Ans. Mr. Carpenter and myself were in the street cars together, coming down town, when he remarked to me that he was going to make an application to the district judge for a payment on the judgment of Graham and Scott of $13.000, and requested me to go with him. We stopped at the post office; we got out and went up into the judge's room. He then made the application for such payment. The judge refused, on the ground that the money must be paid out on the liens according to their priority. I do not pretend to give the whole conversation, but I give the substance. Thereupon Mr. Carpenter got up from his chair and said, That's right, judge; pay as fast as you can; I consent, and then we came away.

Ques. Was this an application for the order itself, or was it a preliminary conversation with reference to a future application to be made to court?

Ans. It was a verbal application. I took it to be for the order itself. No writings were presented.

Ques. During your conversation with Mr. Carpenter during this time was any allusion made to the prior orders of the judge on the Cleveland judgment?

(Objected to. Overruled and exception.)

Ans. I can't state with certainty that there was.

Ques. If you have had other conversations with Carpenter at about that time, will you state whether or not therein allusion was made to payments on the Cleveland judgment?

Ans. No; not at or about that time.

Ques. Was this conversation of which you speak with Carpenter before or after the orders made by the judge for payments on the Cleveland judgment?

Ans. My recollection is, that two payments had been made on the Cleveland judgment prior to the application made by Mr. Carpenter; two were certainly made.

Ques. During these conversations did Mr. Carpenter suggest, either to you or the judge, any impropriety in an order of that kind made at chambers.

(Objected to as immaterial. Overruled and exception taken.)

Ans. He did not.

211 Ques. Did you have any conversation with Mr. Carpenter relative to a postponement of the payments on the Cleveland judgment, in favor of a payment on the judgment of Graham and Scott?

(Objected to as immaterial and incompetent. Objection overruled and Mr. Carpenter excepts.)

Ans. I had.

Ques. Will you please state what the conversation was?

(Objected to as above. Same ruling and exception.)

Ans. After leaving the judge's office, I don't know whose suggestion it was, Mr. Carpenter's or my own; it was suggested that we endeavor to have Mr. Chamberlain waive his right to any money in the hands of the receiver to the amount of $13,000 in favor of the judgment in favor of Graham & Scott; Mr. Chamberlain then owned the Cleveland judgment; I was to talk to Mr. Lynde and Mr. Carpenter was to talk to Mr. Emmons. I made the effort and failed.

Cross-examined by Mr. Carpenter:

Ques. State as near as you can the time of this interview with the judge.

Ans. I cannot nearer than this: it was after the first of February, 1862—I think in the spring of 1862; it was shortly after we moved into our present offices, and that was after the 1st of February, 1862.

Ques. I understand the only conversation you ever had with Mr. Carpenter upon this subject was on the same day of the interview with the judge?

Ans. No, sir. It is not the only conversation I had with him.

Ques. Was all the conversation which you have related as having had or heard with Carpenter on the day of the interview with the judge?

Ans. All that I have related here was on the same day.

Ques. Had you been before spoken to on this subject by Mr. Graham?

Ans. I had never been asked by Mr. Graham to take any part in obtaining an order for the payment of any money.

Ques. Had not Mr. Graham spoken to your partner, Asahel

212 Finch, and had not Mr. Finch spoken to you upon this subject before this time?

Ans. I don't know as to any conversation between Mr. Graham and Mr. Finch, and I have no recollection of Mr. Finch directing me to go up at the time of making this application.

Ques. Had not Finch previous to this spoken to you in regard to aiding me in procuring a payment to be made on that judgment?

Ans. Not to my recollection.

Ques. Was any application made on that day for any payment to be made upon anything else than the Graham & Scott judgment?

Ans. Not that I heard of.

Ques. In the conversation that was had with the judge, was any particular sum named; did I not say to the judge, that we had come to see whether some payments could not be obtained upon the Graham & Scott judgment, and did not the judge at once refuse to do it?

Ans. You stated that you came to make an application for an order for $13,000; that was the amount named. You made verbal application for a payment of $13,000 on the Graham and Scott judgment; the judge refused it on the ground that he must pay those claims according to the priority of liens. No writings whatever were presented to the judge at that time.

Direct examination resumed by Mr. Brown:

Ques. Was any reference made to the second mortgage, or retaining money for it at that time? If so, what was said?

Ans. The judge stated in substance that the second mortgage men had declined to take their interest according to the decree, and that there was money enough retained in the hands of the receiver to pay them at any time, according to the decree, and that he considered that the road was worth sufficient to pay all it owed.

Ques. Was it in this conversation that the judge made the remark about paying the liens in their order?

(Objected to as leading, immaterial and incompetent. Objection overruled, and Mr. Carpenter excepts.)

Ans. It was.

B. K. MILLER.

The parties made from time the stipulations contained in paper herewith returned and marked Exhibit No. 30.

H. L. PALMER.

213 *Exhibit "A."*

United States circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor of Greene C. Bronson,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

Here, before the auditor in this cause, comes the said Alexander Fleming and the Milwaukee and Minnesota Railroad Company, de-

fendants, by Matt. H. Carpenter, the solicitor, and objects that the receiver has not made or filed any continuous monthly account or statement of his receipts or disbursements in this cause, as required by the order of this court on the 28th day of April, A. D. 1864, and therefore there is nothing to be audited or reported on by the auditor, and move that the first exception taken by them to said account be sustained, and these proceedings be dismissed.

Dated Milwaukee, July 30th, 1864.

MATT. H. CARPENTER, *Sol. as above.*

Exhibit A, filed by Mr. Carpenter July 30, 1864.

H. L. PALMER.

214 *Exhibit "B."*

United States circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor of Greene C. Bronson, trustee's complainant, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } Second mortgage, eastern division, foreclosure suit.

Before H. L. Palmer, auditor, here comes A. Fleming and the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, solicitor, and moves for an order on the receiver that by some day to be named by said auditor, he make out and lay before the auditor an account of his receipts and disbursements as receiver in this cause, separate and distinct from any accounts of his receipts and disbursements as receiver in any other cause, or in any other capacity whatever than as receiver in this cause.

Dated July 30th, 1864.

MATT. H. CARPENTER, *Solicitor as above.*

Exhibit B, filed by Mr. Carpenter for def'ts July 30, 1864.

H. L. PALMER.

215 *Exhibit C.—Statement showing the earnings and expenditures of the La Crosse and Milwaukee railroad from June 11th, 1860, to June 13th, 1863, as operated by H. Crocker, receiver, and the payments made by him up to July 1, 1864.*

Earnings eastern division	$2,130.748 23
Earnings western division	1,036.611 69
Total earnings	3,167.359 92
Local ex. eastern division	412.373 34
Local ex. western division	299.683 49
Mileage eastern division	1,006,831 00
Mileage western division	739,747 00
Total mileage	1,746,578 00
Total cost mileage	1,163,290 27

OTHER EXPENDITURES.

	East'n division.	West'n division.	Not divided.
Right of way	$17,823 16	$13,624 29	.....
La Crosse depot	.....	12,208 25	.....
Renewal of track	68,966 61	.....	.....
Rolling stock	.....	.....	$191,722 87
Coupon 1st mortgage	339,105 07	.....	.....
Mil. city	112,356 32	.....	.....
2d mortgage	441 65	.....	.....
Foreclosure "	5,000 00	.....	.....
Sinking fund 1st mortgage	12,000 00	.....	.....
Interest on land grant	.....	79,094 14	.....
Cleveland judgment	.....	.....	73,801 92
Grading, paving, &c	9,040 40	.....	.....
Incumbrances	37,194 84	20,115 80	.....
State taxes	50,019 85	22,973 88	.....
U. S. do.	4,577 28	2,288 63	.....
Fox Lake Station buildings	587 25	.....	.....
Fencing	13,075 10	29,236 34	.....
New buildings	10,757 88	14,240 48	.....
La Crosse elevator	.....	10,265 29	.....
Fire insurance	130 12	4,401 18	.....
Loss and damage	1,000 00	.....	.....
Legal expenses	2,065 68	6,267 62	.....
Licences on patent rights	662 50	737 50	.....
Ballasting	9,177 40	.....	.....
Discount and commissions	4,361 56	2,364 87	.....
Mil. Station buildings	8,365 51	.....	.....
Helfenstein mortgage	.....	3,451 33	.....
Howard judgment	.....	.....	1,000 00
W. Kinney do.	2,048 92	.....	.....
Bridging	14,934 82	5,115 00	.....
	723,691 93	226,384 60	266,524 79
Proportion of mileage	670,820 01	492,470 26	.....
Local expenses	412,373 34	299,683 49	.....
	1,806,885 28	1,018,538 35	266,524 79

216 *Exhibit D.—Recapitulation.*

Earnings eastern division		$2,130,748 23
Earnings western division		1,036,611 69
Total earnings from June 11, 1860, to June 13, 1863.		3,167,359 92
Local expenses, eastern division	$412,373 34	
Other expenditures	723,691 93	
Cost of mileage	670,820 01	
	1,806,885 28	

Local expenditures western division	$299,683 49		
Other expenditures	226,384 60		
Cost of mileage	492,470 26		
		1,018,538 35	
Accounts not divided:			
Rolling stock	191,722 87		
Cleveland judgment	73,801 92		
Howard judgment	1,000 00		
		266 524 79	
To amount due other railroads and individuals			$4,650 08
Balance with Milwaukee and St. Paul Co			39,876 84
By amount, &c		51,161 72	
Balance in the hands of H. Crocker, &c		68,776 70	
		3,211,886 84	3,211,886 84

217 *Exhibit E.—Statement of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee Railroad from June 13th, 1863, to June 30th, 1864, inclusive.*

Gross earnings	$960,616 80
For use of rolling stock	18,981 96
	979,598 76

Expenditures:

1.	Repairs track	$109,528 47
2.	" bridges	7,018 10
3.	" fences	585 45
4.	" buildings	9,931 07
5.	" locomotives	8,433 79
6.	" cars	19,990 20
7.	" tools, &c	6,978 03
8.	Management and general offices	11,680 66
9.	Foreign agencies	8,326 41
10.	Station service	48,001 66
11.	Printing and advertising	5,474 14
12.	Conductors, b., and b	29,862 82
13.	Train and station supplies	6,828 50
14.	Engineers, f., and wipers	45,625 96
15.	Oil and waste	15,158 81
16.	Fuel	37,989 74
17.	Loss and damage	894 79

18.	Personal injuries	$373 21
19.	Car service	3,935 25
20.	Miscellaneous	1,546 63
21.	Telegraph	431 37
22.	Pas earnings refunded	1,365 92
23.	Freight earnings refunded	5,649 68
24.	Mail " "	96 19
25.	Rents	57 67
26.	U. S. revenue tax	7,310 43
27.	Renewal of track	89,658 23
28.	New buildings	27,497 84
29.	Animals killed	864 00
30.	Rent of track	40 00
31.	Furniture	900 16
32.	Fencing	638 43
33.	State taxes	15,221 82
34.	Legal expenses	6,390 23
35.	New York office	2,007 05
36.	Right of way	190 00
37.	Purchase of rails	23,232 00
38.	Milwaukee and St. Paul railway	109,950 92
39.	Use of rolling stock	166,192 30
40.		
41.	Balance to creditor	
42.	Eastern division	143,750 93
		979,598 76

Exhibit E, August 22, 1864.

H. L. P.

218 *Continuation of Exhibit E, filed April* 13, 1865—*H. L. Palmer, auditor.—Statement of the earnings and expenditures of the eastern division, (La Crosse and Milwaukee R. R.) from June* 30*th*, 1864, *to February* 28*th*, 1865.

Gross earnings		$312,496 52
Gross earnings from use of rolling stock on western division		5,767 53
Total earnings		318,264 05
EXPENDITURES.		
Repairs of track	$77,949 26	
bridges	1,548 96	
fences	6 44	
buildings	4,319 37	
locomotives	10,569 36	
cars	16,280 87	

Repairs of tools and machinery	$9,015 16	
Management and general offices	5,181 12	
Foreign agencies	970 02	
Station service	25,169 41	
Printing and advertising	2,376 76	
Conductors, baggage and brakemen	14,290 69	
Train and station supplies	3,591 45	
Engineers, firemen and wipers	21,594 40	
Oil and waste	10,724 90	
Fuel	18,003 00	
Lost and damaged freight	1,305 64	
Personal injuries	107 67	
Car service	825 52	
Miscellaneous	1,022 39	
Telegraph	309 61	
Rents	25 00	
U. S. revenue tax	7,575 80	
Renewal of track	25,765 22	
New buildings	7,057 13	
Animals killed	513 00	
Furniture	83 15	
Fencing	753 93	
State taxes	15,221 82	
Legal expenses	239 00	
Milwaukee and St. Paul Railway Company	32,000 00	
Locomotive service	1,732 00	
Interest and exchange	83 16	
H. Crocker, receiver	764 10	
Use of rolling stock	36,118 86	
Deficit		$34,830 12
	353,094 17	353,094 17

219 *Exhibit "F."*

MILWAUKEE AND ST. PAUL RAILWAY, *Chief Clerk's Office.*

EASTERN DIVISION.

Earning from June 11th, 1860, to January 13th, 1862.		$1,127,345 90
Operating expenses for same period		560,800 83
		566,545 07
Interest to be deducted.		

WESTERN DIVISION.

Earnings from June 11th, 1860, to January 13th, 1862.		$481,601 24
Operating expenses		367,934 92
		113,666 32

Exhibit F, Aug. 23, 1864. H. L. PALMER.

220 *Exhibit G, Aug.* 23, 1864.—*H. L. P.*

H. Crocker, rec'r, to Milwaukee and St. Paul Railway Co.

To net earnings of western division from 25th April to 30th, 1863, both inclusive	$4,608 58
To net earnings of western division from May 1st to 31st, 1863, both inclusive	24,548 87
	29,157 45

Received of H. Crocker, receiver of the La Crosse and Milwaukee railroad, twenty-nine thousand one hundred and fifty-seven and 45-100 dollars, being the portion of net earnings due the western division of the La Crosse and Milwaukee railroad from the 25th day of April to the 31st day of May, 1863, both inclusive. The above sum is estimated upon the basis heretofore adopted by the receiver in dividing earnings and expenditures between the eastern and western divisions of said road, and is made subject to the further order of the court or the award of the referees to whom the matter may be referred. If it shall hereafter appear that any portion of the above sum is not due said Milwaukee and St. Paul Railroad Company, such excess shall be refunded to the receiver, and in like manner the receiver shall pay said company such additional sum as shall hereafter be found due said company for the time above specified. The amount paid as above does not include the claim made by the said Milwaukee and St. Paul Railroad Company, for the use of rolling stock.

(Signed) D. M. HUGHES, *Pres't.*

221 *Exhibit H.—Statement of the operation of the eastern division of the La Crosse & Milwaukee R. R. for the month of April,* 1864.

EARNINGS.

From freight	$43,190 93
passengers	25,258 31
mails, rents, and miscellaneous	1,541 50
use of rolling stock	2,064 95
	72,055 69

EXPENSES.

Repairs :

Of road	$12,118 06
bridges	33 33
fences	33 60
buildings	1,641 88
locomotives	793 65
cars	1,714 43
tools and machinery	584 61

Operating :	
Management and general offices	$986 51
Foreign agency and advertising	429 71
Station service	4,137 37
Stationery	48 43
Conductors, baggagemen and brakemen	2,145 46
Train and station supplies	469 97
Engineers, firemen and wipers	3,366 95
Oil and waste	1,430 05
Fuel	2,508 32
Loss and damage of freight and baggage	80 66
Miscellaneous expenses	120 69
Telegraph	49 32
Rents	12 50
Use rolling stock	14,174 71
Other expenses :	
Taxes, U. S.	758 00
Renewal of track	10,966 21
New buildings	5,090 93
State tax, 1 1-2	15,221 82
Total expenses	78,884 17
Gross earnings	72,055 69
Net earnings	6,828 48

Exhibit H, testified to by D. W. Keyes, Aug. 23, 1864.

H. L. P.

122 *Exhibit I.—Statement of the operation of the eastern division of the La Crosse and Milwaukee Railroad for the month of May, 1864.*

EARNINGS.

From freight	$81,987 03
passengers	22,723 66
mails, rents, and miscellaneous	884 96
use of rolling stock	3,682 58
Total earnings	109,278 23

EXPENSES.

Repairs :	
Of road	$14,802 37
bridges	151 90
buildings	848 62
locomotives	821 74
cars	1,723 64
tools and machinery	1,177 05

Operating :	
Management and general offices	$912 57
Foreign agency and advertising	405 80
Station service	4,068 48
Stationery	582 95
Conductors, baggagemen and brakemen	3,095 81
Train and station supplies	887 53
Engineers, firemen and wipers	4,878 18
Oil and waste	2,248 07
Fuel	4,703 00
Loss and damage of freight and baggage	232 66
Car service	222 85
Miscellaneous expenses	120 07
Animals killed	20 00
Use of rolling stock	21,598 65
Telegraph	71 88
Other expenses :	
Taxes, U. S. revenue	682 91
Renewal of track	10,115 59
New buildings	6,533 74
Furniture	43 76
	80,879 82
Gross earnings	109,278 23
Total expenses	80,879 82
Net earnings	28,308 41

Exhibit I, testified to by D. W. Keyes, Aug. 23, 1864.

H. L. P.

Exhibit "K."

223 Amount of inventory of material on the eastern division of the La Crosse and Milwaukee railroad on the 13th day of June, 1863 ..... $87,313 14

Schedule K, testified to by E. H. Goodrich.

H. L. PALMER.

224 *Exhibit L, H. L. P.—The Palmer mortgages on eastern division.*

This indenture, made the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, party of the first part, and Francis A. Palmer, of the city of New York, party of the second part, witnesseth: Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are now engaged in

constructing a railroad from the city of Milwaukee, on Lake Michigan, to La Crosse, on the Mississippi river, in the State of Wisconsin, and for that purpose, in part, have resolved to raise a sum of money by loan for the purpose of purchasing iron, rails, and machinery therefor, and of aiding in the construction of said railroad and putting the same into operation, and for the objects and purposes aforesaid, and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed and intended, by the said parties of the first part, to execute, issue, and deliver five hundred bonds or writings obligatory, each for the sum of one thousand dollars, to be numbered, respectively, from number one (1) to five hundred, (500,) inclusive, and nine hundred bonds, each for the sum of five hundred dollars, to be numbered, respectively, from number one (1) to nine hundred, (900,) inclusive, which bonds are to be in the following form:

225 "UNITED STATES OF AMERICA, *State of Wisconsin:*

"No. —. The La Crosse and Milwaukee Railroad Company. $——.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to Francis A. Palmer, or bearer, in the sum of dollars, which sum said company promise to pay the said Francis A. Palmer, or to the holder hereof, at the Broadway Bank, in the city of New York, on the first day of November, in the year one thousand eight hundred and seventy-four, and also interest thereon at the rate of eight per centum per annum, semi-annually, on the first day of each November and of each May ensuing the date hereof, until the said principal sum shall be paid on the presentation and delivery of the annexed warrants at said bank. This bond is one of a series of fourteen hundred bonds of the company aforesaid, of even date, to wit, 500 bonds for the sum of $1,000 each, numbered, respectively, from number 1 to number 500, inclusive, and 900 bonds for the sum of $500 each, numbered, respectively, from number 1 to number 900, inclusive, amounting in the aggregate to $950,000, secured by a mortgage executed in trust to Francis A. Palmer, of the city of New York, upon that part of the road of said company extending from its eastern termination, in the city of Milwaukee, to Portage City, being 95 miles in distance, together with the property and effects of said company on that part of the road. And said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same were a note of hand, payable to bearer.

"The holder of this bond shall be entitled, at any time within ten years from the date hereof, to convert the principal sum into the stock of the said company, at par, on surrendering this bond, with the interest warrants not then due annexed.

"In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, at Milwaukee, the first day of July, 1854.

"—— ——, *President.*
"—— ——, *Secretary.*

226 "I hereby certify that the La Crosse and Milwaukee Railroad Company have executed to me in trust the mortgage referred to in the foregoing bond, and that I have caused the same to be recorded in the several counties wherein said mortgaged premises are situated, and that the foregoing is one of the several bonds described in and secured by said mortgage.

"——— ———, *Trustee.*"

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds, and interest thereon accruing, and in consideration of one dollar paid to the said company by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, his successor or successors in the trust hereby created, all their said road from its eastern termination, in the city of Milwaukee, to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied, or so to be, for right of way within the limits aforesaid, together with bridges, fences, privileges, rights, and real estate owned by said company for the purposes of said road, or which may be hereafter acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the same, and all lands used for and occupied within the limits aforesaid by depots or stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shops, tools, and machinery now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed and to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining. But nothing herein contained shall be so construed as to prevent the said parties of the first part from selling, hypothecating, or otherwise disposing of any city or county bonds or other securities received in payment of stock or otherwise, or of any lands or other property of said com-
227 pany not necessary to be retained for the road-way, depots, and stations, nor required for the construction or convenient use of that part of said road, nor from collecting moneys due said company on stock subscription or otherwise; nor shall anything herein contained be so construed as prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repair of the remaining parts of said road westward towards the Mississippi river all stock subscriptions, donations, or loans of money, lands, or other property which may have been, or may hereafter be, made for that purpose; but said parties of the first part shall have full right to so to proceed without let or hindrance from the said

party of the second part. And the remaining portion of the said railroad, which by the said parties of the first part may be so constructed, shall be held in use by the said parties of the first part to their own behoof and benefit forever, so far as the claims of the said party of the second part or his successors might otherwise be construed as in conflict therewith. It being distinctly understood that the conveyance made by this indenture is only for so much of the present or hereafter to be acquired rights, interest, and property of the said company, parties of the first part, as are or shall be vested or belong or appertain to that part of said railroad extending from the city of Milwaukee to Portage City aforesaid, and being in distance ninety-five miles. To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest or any of said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then, after sixty days after such default, (in case such principal or interest shall then remain unpaid,) upon request of the holder of such bond it shall and may be lawful for the said party of the second part, his successor in said trust, or assigns, at his or their discretion, to enter into and upon and take possession of all and singular the whole or any part of the property and effects, mortgaged as above expressed, or so intended to be, and as the attorney in fact or agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have and, in his or their discretion, use and employ the same, making
228 from time to time all such repairs, alterations, and additions thereto as he or they may deem necessary, and receiving the tolls, rents, issues, and profits of said part of said railroad and appurtenances, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the second part, his successor in said trust, and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall cause the said premises, property, and effects hereby mortgaged, or intended so to be, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days, notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple of said premises, and such other instruments as may be necessary or proper for the property or effects so sold, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming

under them, of all right, interest, or claim in or to said premises, property, or effects, or any part thereof. And said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the premises, property, or effects hereby mortgaged, or intended so to be, or any part thereof, to the said party of the second part, his successor in said trust, and assigns, for more fully carrying into effect the objects hereof, particu-
229 larly for the conveyance of any property or effects subsequently to the date hereof acquired by said parties of the first part, and hereby intended to be mortgaged as hereinbefore expressed; and the said parties of the first part hereby further covenant as aforesaid that the money borrowed for the purposes aforesaid, upon the security of said bonds, shall be faithfully applied to the purchase and transportation of iron rails and machinery for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing, and furnishing of said railroad; and it is hereby mutually agreed, and these presents are upon this express condition, that on the payment of principal and interest of said bonds at the times therein specified for the payment thereof, or the conversion thereof into stock in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises, property, and effects hereby conveyed or granted shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed that the said party of the second part, his successors in said trust, and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agents employed by him or them when such agent is selected with reasonable discretion; and that said party of the second part, his successor in said trust, or assigns, shall be entitled to receive proper compensation for any labor or services performed by him in the discharge of his trust in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same. And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right and interest, power and control in the premises, property, and effects aforesaid shall be divested, cease, and determine, and the same shall from thence-

forth for the purposes aforesaid be vested in, and all and singular the trusts and duties hereinbefore mentioned and enumerated shall devolve upon, Isaac Seymour, of the city of New York, if he shall be living, without any further or other assurance or conveyance of or for the same ; and in case of the mental incapacity, death, or resignation of the said Isaac Seymour, after the trust hereby created shall have devolved on him, the said parties of the
230 first part shall, or in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the supreme court of the State of Wisconsin to appoint a new trustee, being a resident of the city of New York, to supply his place, and thereupon such new trustee shall become vested for the purposes aforesaid with all the rights and interest hereby conveyed to, or vested in, the said party of the second part, without any further assurance or conveyance for the same ; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for the purpose.

In witness whereof, the parties of the first part have caused their corporate seal to be hereto affixed, and these presents to be subscribed by their president, and the said party of the second part has set his hand and seal the day and year first above written.

STODDARD JUDD, *President.* [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT E. GILLET.
J. H. BURNELL.

FRANCIS A. PALMER. [SEAL.]

Sealed and delivered in presence of—
GEO. C. PETERS.
LEWIS N. GLOVER.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Lewis N. Glover, residing in the said city of New York, duly appointed by the governor of the State of Wisconsin a commissioner for State of Wisconsin in and for the State of New York, duly sworn and qualified to take testimony, acknowledgments, &c., to be used or recorded in said State of Wisconsin, do, by this instrument, given under my hand and official seal, certify that on this thirtieth day of June, A. D. eighteen hundred and fifty-four, before me personally appeared Francis A. Palmer, known to me to be the same person who executed the foregoing instrument, and the said Francis A. Palmer acknowledged the signing and sealing of the said instrument to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

LEWIS N. GLOVER, [SEAL.]
Commissioner for Wisconsin in New York.

231 STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

On this fifth day of July, A. D. 1854, before me, Robert E. Gillet, a notary public in and for said county of Milwaukee, and State of

Wisconsin, personally came Stoddard Judd, the president of the La Crosse and Milwaukee Railroad Company, to me known, being by me duly sworn, did depose and say that he resides in the town of Fox Lake, county of Dodge, in the aforesaid State of Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that he knows the corporate seal of the said railroad company; that the seal affixed to the above and foregoing instruments, in writing, is such corporate seal; that it was so affixed by order of the board of directors of said railroad company, and that he signed his name thereto by like order, as president of the said railroad company.

In witness whereof, I have hereto subscribed my name and affixed my notarial seal this fifth day of July, A. D. 1854.

ROBERT E. GILLET, [SEAL.]
Notary Public, residing in the county of Milwaukee, State of Wisconsin.

Recorded July 5th, A. D. 1854, at 10 o'clock a. m.

232 *Exhibit No. —.—Supplemental mortgage to Francis A. Palmer.*

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county, and State of New York, party of the second part. Whereas the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage covering all their real and personal property and estate appertaining to the eastern line or section of their road, extending from the city of Milwaukee to Portage City, and being about ninety-five miles in length, which mortgage bears date on the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the several counties through which said road runs, the same having been made to the party of the second part in trust to secure the payment of the principal and interest of certain first mortgage eight per cent. coupon bonds of the said company of the denominations of one thousand dollars and five hundred dollars, bearing date the first day of July, A. D. one thousand eight hundred and fifty-four, and becoming due on the first day of November, A. D. one thousand eight hundred and seventy-four, respectively, with
233 the interest thereon from date, at the rate of eight per cent. per annum, payable half yearly thereafter, which bonds amount in the aggregate to nine hundred and fifty thousand dollars, and which the said company, by virtue of the said mortgage, contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their eastern line or section of road from the city of Milwaukee to Portage City, as by reference to the said mortgage or the record thereof more fully and at large appear: And whereas the said company have heretofore issued and sold a portion of the said bonds thus secured,

amounting to four hundred and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from number one to number sixty-four, inclusive; number seventy to number ninety, inclusive; number ninety-six to number one hundred, inclusive, and number one hundred and fifty-one to number three hundred, inclusive; and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from number one to number four hundred and twenty, inclusive; and have built and equipped about sixty-one miles of the said eastern line or section of their road, leaving on hand and in their possession unsold the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and which the company contemplate to sell and negotiate for the purpose of raising means to aid in finishing the remainder of their said eastern section or line of road. And whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have, by a resolution of their board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net
234 earnings of the road, and depositing with the United States Trust Company, of the city of New York, for the next nineteen years, the sum of twelve thousand dollars, which principal sum, together with the accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive, as aforesaid; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, as aforesaid, on or before the maturity thereof:

Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions, and agreements contained in the aforesaid indenture of mortgage, heretofore executed and delivered as aforesaid, and as supplementary thereto, for the considerations aforesaid, and for and in consideration of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have cov-

enanted, promised, and agreed, and hereby do covenant, promise, and agree, to and with the said party of the second part, his successor and successors in the trust hereby created, and assigns, that for the further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and amounting in the aggregate to five hundred thousand dollars, they will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriate from the net earnings of the said road for the preceding twelve months, and deposit with the United States Trust Company, of New York, (an incorporated institu-
235 tion, located and doing business in the city of New York,) or its successor, which said United States Trust Company, of New York, or its successor, is hereby made, constituted, and appointed the trustee or receiver of the parties hereto, and of all the holders of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which, together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage, on or before the maturity of the said last-mentioned bonds; the first setting apart and appropriation of said sinking fund to be made and deposited on the first day of November, A. D. one thousand eight hundred and fifty-six, and the said sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company or its successor in the purchase of the residue of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are of the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, issued under the aforesaid mortgage, whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same at

the date of the purchase. In case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then, and in that case, the United States Trust Company, or its successor, shall from time to time invest the said funds, under the advice and direction of the board of directors of the party of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part: provided, however, that the obligations of the parties of the first part to make such annual deposits to the said sinking fund, as aforesaid, shall cease and determine so soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulations of interest thereon, form a capital sufficient to pay and discharge at the maturity thereof all the outstanding unconverted bonds, numbered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successors, shall at all times keep a proper and correct registry and account of the said several securities and funds to be held by them as aforesaid and belonging to the said sinking fund for the inspection and examination of the parties hereto, and of any of the stockholders or bondholders of the road, and shall annually hereafter, during the continuance of the said trust, render to the parties hereto a written statement, showing the true state and condition of the said sinking fund, and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall, as soon as purchased, be cut, cancelled, and retired by the said United States Trust Company, or its successor, and be held and returned by them at the expiration of their trust.

The interest coupons on said purchased bonds are, however, to be regularly paid to the said United States Trust Company, or its successor, by the parties of the first part, in the same manner as if held and owned by a third party for value, and in case of the resignation of the said United States Trust Company as such trustee or receiver, or of its successor, or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time to appoint and substitute, as a new trustee or receiver, any other incorporated institution, located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose; and said new trustee or receiver, or the successor thereof, shall be vested with all the right, estate, powers and privileges hereby conveyed to or vested in the said United States Trust Company. And the said United States Trust Company, or its successor, shall, upon request, forthwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property and securities belonging to the said sinking fund so deposited with and held by them as aforesaid. The said United States Trust Company, or its successor, shall apply the funds and available securities in their hands, to the payment and redemption of the said residue of unsold mortgage bonds; two hundred and sixty of which are for the sum of one thousand dollars

each, and numbered from No. 65 to No. 69 inclusive; from No. 91 to No. 95 inclusive; from No. 101 to No. 150 inclusive, and from No. 301 to No. 500 inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900 inclusive; at their maturity rendering the overplus, if any, to the parties of the first part, or their assigns, and in case the parties of the first part shall fail, neglect or refuse to set apart, appropriate and deposit with the said United States Trust Company, or its successor, the said several sums of money or any or either of them for the purposes of a sinking fund at the times and in the manner hereinbefore particularly set forth and provided, then at the expiration of sixty days from and after such default, failure, neglect or refusal, in case such payment and appropriation to the said sinking fund shall not have been made upon the request of the holder of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from No. 91 to No. 95 inclusive from No. 101 to No. 150 inclusive, and from No. 301 to No. 500 inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900 inclusive, or upon the request of the said United States Trust Company, or its successor, the said party of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon, and take possession of all or any part of said premises, real and personal estate and property, and as the attorney in fact or the agent of the said parties of the first part, by himself or agents or substitutes duly constituted, have, use and employ the same, making from time to time all needful repairs, alterations and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid, and the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders
of at least one-half of the said residue of the said mortgage
238 bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid or unconverted into stock and not purchased and deposited for the sinking fund as aforesaid, shall cause the said premises, real and personal estate and property, rights and franchises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all the said residue of such mortgage bonds, numbered as last aforesaid, as may be then unpaid and unconverted, and not purchased and deposited as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days, previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the pur-

chaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim, of, in, or to said premises, real and personal estate and property, right, and franchises, or any part thereof. The amount of the bids or purchase money on the said sale may be paid and satisfied in whole or in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or in part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund, as compared to the amount of the outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds numbered as last aforesaid, issued under the said mortgage and not converted nor purchased for the sinking fund, nor used in payment of
239 such bid as aforesaid, and shall pay over and restore the remainder of said proceeds to the parties of the first part; their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant for the considerations aforesaid to execute and deliver any further reasonable and necessary conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests or property subsequently to the date hereof, acquired by said parties of the first part, and comprehended or intended to be in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and transportation of iron rails and machinery and for the construction and extension of said road and the expenses attending such loan and purchase, and that said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing and furnishing said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of

the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage or on the conversion thereof into stock in manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors in the trust hereby created or assigned, shall be void; and when the principal and interest of all the residue of the said mortgage bonds issued under the said mortgage shall be fully paid, and the residue of said bonds numbered as last aforesaid duly cancelled, the said party of the second part, his successor or successors, on the trust hereby created, or assigns, shall, upon the request of the parties of the first year or their assigns, duly execute and acknowledge the payment and satisfaction of the agreement, and shall deliver up the same to the parties of the first part or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, it shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, where such agent or attorney is selected with reasonable discretion; and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust in case he or they shall be compelled to take possession of said premises and real and personal property and estate, or any part thereof, or to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease and determine; and the said parties of the first part shall, or, in their default to take proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage, may apply to the supreme court of the State of Wisconsin to appoint in his place a new trustee, being a resident of the city of New York, and thereupon, and upon his acceptance of the trust, such new trustee shall become vested for the purposes aforesaid with all the rights, estate, property and interest hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements or conveyances for that purpose, to the end that the true intent, object, and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereto caused to be affixed their corporate seal, and these presents to be be signed by their president, and countersigned by their secreta-

241 ry, at Milwaukee, Wisconsin, and the said party of the second part has also hereunto set his hand and seal.

BYRON KILBOURN,
President of the La Crosse & Milwaukee Railroad Company.
F. A. PALMER, *Trustee.* [SEAL.]

Attest:

LEVI BURNELL, *Sec'y.* [SEAL.]

The words "numbered as last aforesaid," interlined between 11th and 12th lines of 5th page, before execution.

In presence of—
NELSON MCNEAL.
CHARLES E. JENKINS.

Witnesses to signature of F. A. Palmer, trustee:
W. A. WOODWARD.
JOHN J. HILL.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On this 18th day of February, 1856, came before me Byron Kilbourn, president of La Crosse and Milwaukee Railroad Company, and Levi Burnell, secretary of said company, to me personally known, and severally acknowledged that they had executed the foregoing conveyance, written instrument, for the uses and purposes therein expressed.

CHAS. E. JENKINS,
County Judge, Milw. Co., Wis.

STATE OF WISCONSIN, *County Court, Milwaukee County, ss:*

I, Matthew Keenan, clerk of said court, do hereby certify that the Hon. Chas E. Jenkins, whose name appears above, and before whom the foregoing acknowledgment was made, was at the date thereof, and now is, acting judge of the county court aforesaid, duly elected and qualified; and further, that I am well acquainted with the handwriting of said judge, and verily believe the signature purporting to be his is genuine.

In testimony, hereunto set my hand and affixed the seal of said court, this 18th day of February, A. D. 1856.

[SEAL.] MATTHEW KEENAN, *Clerk.*

242 NEW YORK CITY, COUNTY AND STATE, *ss:*

On this 20th day of February, 1856, before the undersigned, a commissioner in and for the said State, residing in the city of New York, appointed by the governor of the State of Wisconsin, under the laws of said State, with full power and authority to take the acknowledgment and proof of deeds, and to be used or recorded in said State of Wisconsin, appeared Francis A. Palmer, known to me to be

the person named in the foregoing indenture, and acknowledged that he executed the same freely as his act and deed, as trustee, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[SEAL.] W. A. WOODWARD,
Commissioner for Wisconsin in New York.

Recorded March 17, 1856, at 8 o'clock a. m.

243 *Exhibit M.—Deed to the city of Milwaukee, of September 1st, 1853, securing the issue of city bonds.*

Milwaukee, Fond du Lac and Green Bay Railroad Company to city of Milwaukee—mortgage.

This indenture, made the first day of September, in the year one thousand eight hundred and fifty-three, between the Milwaukee, Fond du Lac and Green Bay Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Alexander H. Johnston, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of said city of Milwaukee, party of the second part. Whereas the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads, approved April 2d, 1853," and of a certain other act of said legislature, entitled "An act to authorize the Milwaukee, Fond du Lac and Green Bay Railroad Companies to consolidate," approved June 27th, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the Milwaukee and Fond du Lac Railroad Company," passed May 19th, 1853, and approved by the legal voters of said city, at an election held for that purpose according to law, on the 7th day of June, 1853, is to
244 issue and deliver to the said parties of the first part the negotiable corporate bonds of said city of Milwaukee in an amount or amounts not to exceed in all two hundred thousand dollars, payable twenty years from the date thereof, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the Union Bank of New York, in the city of New York, as a loan by the said city to the said company, to aid in the construction of its railroad, under and in conformity with said acts and ordinance above mentioned; and the said Milwaukee, Fond du Lac and Green Bay Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said company as aforesaid, have this day executed to Alexander H. Johnston, treasurer of the said city of Milwaukee, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president, and countersigned by the secretary of said company, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the conditions and covenants therein, that said railroad company shall punctually pay and discharge the principal and

interest moneys of such bonds of said city as may be issued and delivered to the said company as a loan as aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, losses, damages, and expenses which it may incur or sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company: Now, therefore, this indenture witnesseth, that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company above stated, and in consideration of one dollar to them at the sealing and delivery hereof in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer and convey, to the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee, all the following present, and in future to be acquired, property of the said parties of the first part—that is to say: The first section division of the railroad of said parties of the first part next to the city of Milwaukee, being and embracing that portion of said road commencing at the terminus of said railroad in the said city of Milwaukee and
245 extending northwesterly on the line of said road to a point forty miles distant from the said city of Milwaukee, in the State of Wisconsin aforesaid, including the right of way and land occupied, or to be occupied, by said road, together with the superstructure and tracks thereon, and all rails and other materials used thereon, side tracks, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property, right thereto and interest therein, together with the name and functions appertaining to the said roads, tolls, rents and income to be had or levied therefrom, and all franchises, rights and privileges of the said parties of the first part, of, in, to or concerning the same, as well that hereafter to be acquired and constructed as that already acquired or constructed, under their said acts of incorporation, wherever the same may be; but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use and repairs of the remaining parts of said road northward, all stock, subscriptions, donations or loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose, but said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office. It being distinctly understood that the conveyance made by this indenture is only for so much of the present right, interest and property, or in the future to be acquired rights, interest and property, of the said parties of the first part, as do or may exist on that part of said railroad extending from the city of Milwaukee a distance of forty miles northwesterly on the line thereof, in the State

of Wisconsin aforesaid: To have and to hold the said rights, property and premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee forever. And the said parties of the first part hereby covenant to and with the said party of the second part, that the said parties of the first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that the said parties of the first part will forever warrant and defend the same to the party of the second
246 part, and his successors in office, for the use and benefit of said city against all claims whatsoever, except, and this conveyance is made by the said company and received by said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises and appurtenances above described, executed or to be executed thereupon for the sum not exceeding ten thousand dollars per mile for each and every mile of road embraced therein, and not exceeding in the aggregate four hundred thousand dollars. This conveyance is intended as a mortgage to secure the punctual payment and discharge of the principal and interest moneys of bonds of said city of Milwaukee to be issued and delivered as a loan to the said parties of the first part in an amount or amounts not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the Milwaukee, Fond du Lac, and Green Bay railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of even date herewith above alluded to; and in case the said parties of the first part shall fail to pay the principal or any part thereof, or any of the interest on any of the said bonds of the said city of Milwaukee, at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of said company, then the said party of the second part and his successors in office may at once enter into and take possession of all or any part of said premises and property for the use and benefit of said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agent or substitutes duly constituted, have, use and employ the same, making from time to time all needful repairs, alterations and additions thereto, and after deducting the expenses of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all said city bonds as remain unpaid, and of all liabilities of the said parties of the first part upon their said bond, or the said party of the second part and his successors in office, at his or their discretion, may cause the said premises and property, or so much thereof as shall be necessary to pay and discharge the principal and interest of said city bonds, or so much thereof as may then be due and unpaid as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, loss and expenses incurred in consequence of the issue of its said bonds, to be sold at public auction

in the city of Milwaukee, in the State of Wisconsin, aforesaid,
247 or in the city of New York, giving at least forty days' notice of the time, place and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof at such sale a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of said first or prior mortgage, of all right, interest, or claim in or to said premises and property, or any part thereof. And said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof, and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said party of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of said city, for more fully carrying into effect the objects hereof, particularly the conveyance of any right or property, subsequently to the date hereof, acquired by said parties of the first part, and comprehended in the description hereinbefore contained. And the said parties of the first part hereby further covenant, for the consideration aforesaid, that the said city bonds so to be issued and delivered as a loan to the said parties of the first part as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said first section or division of forty miles of said Milwaukee, Fond du Lac, and Green Bay railroad, next to said city of Milwaukee, and intended to be embraced within this indenture. And the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in the performance of the covenants and conditions therein contained, shall not authorize the sale of said
mortgaged premises and property for such default without
248 public notice of such sale being given in the manner required by law, and for at least sixty days prior to such sale. And these presents are upon this express condition, that on payment by said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void, and the right to the

premises hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, reconveyance, re-entry, or other acts.

In witness whereof, the said Milwaukee, Fond du Lac, and Green Bay Railroad Company have caused their corporate seal to be hereto affixed, and these presents to be signed by their president and countersigned by their secretary, the day and the year first above written.

[SEAL.] JAMES KNEELAND,
President Milwaukee. Fond du Lac and Green Bay Railroad Company.
J. N. MASON *Secretary.*

249 *Exhibit N.—Land grant mortgage.*

Deed of trust, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as after mentioned, all of the city and State of New York, parties of the second part.

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

(Here follows said act.)

And whereas the legislature of said State of Wisconsin subsequently passed an act, approved October 11th, 1858, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856."

(Here follows said act.)

And whereas the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company, under its corporate
250 seal, was on the same day deposited in the office of the Secretary of State.

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, has determined to borrow a sum of money not exceeding ten million of dollars, and to issue its *bonds* for the repayment of the moneys which may be borrowed, with the interest thereon, nine thousand of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

"UNITED STATES OF AMERICA, *State of Wisconsin:*

"The La Crosse and Milwaukee Railroad Company.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix river or lake, which sum they agree to pay to the bearer hereof on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York, semi-annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9,000 respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2,000 respectively, make in the aggregate the sum of ten millions of dollars; to secure the payments of all which bonds, a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired, or may hereafter acquire, in all the land granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled "An act granting certain lands to the State
251 of Wisconsin, to aid in the construction of railroads in said State" approved June 3d, 1856,' so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired, or may hereafter acquire, in said road from Madison to St. Croix river or lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed, bearing date the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property, and the interest thereby conveyed to said trustees.

"In witness whereof, said railroad company has hereto affixed its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord 1857.

[L. S.] "_____ _____, *President.*

"_____ _____, *Secretary.*

"Registered and countersigned by the trustees, this day of , 185 .

"——— ———, *Trustees.*"

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the paymants of such bonds as may be issued as aforesaid, in the manner herein provided:

Now, therefore, this deed witnesseth, that the said railroad company, in consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said parties of the second part, all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute, the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may here-
252 after constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also, all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter; and also, all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said roads, or either of them; and also, all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads.

And furthermore, and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said parties of the second part, all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land: together with all and singular the hereditaments and appurtenances belonging, or in any wise appertaining, to the lands and real estate hereby conveyed, or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, to-

gether with all the rights, liberties, privileges, and franchises of said railroad company, in repect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature, so far as
253 the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company:

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns, forever, as joint tenants, and not as tenants in common; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads from Madison to St. Croix river or lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same, and take and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. When said road, from Madison to St. Croix river or lake, shall be surveyed and located, and the particular lands granted as aforesaid to aid in the construction thereof shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten million of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company, that to the best of their knowledge, information, and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify in writing to said trustees that it has contracted for the sale of any section or parcel of said lands at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the residue of the consideration money, with the interest thereon, as hereinafter men-
254 tioned, shall be delivered to said trustees, the mortgage having been first duly acknowledged and recorded, the said trustees will thereupon make, execute, and acknowledge a deed conveying to such purchaser, his heirs and assigns, all the right, title, interest, and estate of the said trustees of, in, and to the section or parcel of land so sold, with a covenant that they have not done any act, mat-

ter, or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage of the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured. Sales may be made in like manner of any section or parcel of said lands, at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided also, that the aggregate sums on all sales then and previously made shall be equal to or above the aggregate for all the land sold as specified in said schedule.

Third. The consideration money on any such sale of land may be paid, either in whole or in part, by delivering to said trustees to be cancelled one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid, at their par value; and two or more purchasers may unite and pay a part or all of the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All money which may be received by said trustees under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and other expenses, shall constitute a sinking fund for the redemption and payment of the bonds so to be issued
255 by the railroad company as aforesaid, and shall be faithfully applied to that object; and until the moneys shall be so applied, the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same; and whenever there shall be any money so on deposit, said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof; and whenever the sum so on deposit shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in case a sufficient amount of bonds to absorb said surplus cannot be obtained at par in the city of New York, such trustees shall, on the written request of said railroad company, make purchase of bonds, at a premium not exceeding ten per centum, if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall pur-

chase any bonds, as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion, to sell, at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase money; and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of lands, or if default shall be made in the payment of the principal sum of said bonds, at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon, and take possession of all and singular the said road
256 from Madison to the St. Croix river or lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed; and may operate said road, and take and receive the income and profits thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereby conveyed, or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees, and said railroad company, of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid; but before any sale of the said lands, or either of them, or the rights, liberties, privileges, or franchises aforesaid, shall be made at auction, notice of such intended sale shall be published, once in each week for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers at the least published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner hereinbefore provided.

Seventh. Said railway company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed; and said trustees as-

sume no duty or responsibility on those subjects, or in relation to any other matter, except as is herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, neither of the trustees shall be answerable for the
257 acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in and had enacted the deed. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associates, or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilites in relation to the same, as fully as though he had been orginally named as a trustee, and had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain, or be put to, in the execution of the trust, and keep them fully indemnified in the premises.

258 Said trustees hereby accept and covenant and agree to and with said railroad company faithfully to execute said trust; and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will from time to time, during the

continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its [L. S.] president and secretary; and the trustees have subscribed their names and affixed their seals the day and year first above written.

BYRON KILBOURN, *President.*
EDWIN H. GOODRICH,
Secretary of the Railroad Company.
GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP, *Trustees.*

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich, secretary:

E. MARINER.
S. H. ALDEN.

Witnesses as to Messrs. Soutter and Knapp:

J. S. ATWOOD.
JOHN BISSELL.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him:

EDWARD WADE.
S. H. ALDEN.

259 *Exhibit O.—Mortgage to Bronson and Soutter, eastern division.*

Deed of trust, made this seventeenth day of August, in the year of our Lord eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees as hereinafter mentioned, parties of the second part.

Whereas said railroad company, for the purpose of constructing its roads, has determined to borrow a sum of money not exceeding one million of dollars, and to issue not exceeding one thousand of its bonds for the repayment of the sums which may be borrowed, with interest thereon, which bonds will be numbered respectively from one to one thousand, both inclusive, and will be substantially in the following form to wit:

"UNITED STATES OF AMERICA, *State of Wisconsin:*

"No. —. $1,000.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted
260 to the bearer thereof in the sum of one thousand dollars, for money borrowed for the construction of their roads, which sum they agree to pay to the bearer hereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York, semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. The holder of this bond may, at any time within five years from the date hereof, convert the same into the capital stock of the company, estimating both the bond and the stock at par, on surrendering the bond with the unpaid coupons.

"This is one of one thousand bonds, all of the same tenor, and numbered from 1 to 1,000 respectively, making in all one million of dollars, for securing the payment of which a trust deed has been executed by said company to Greene C. Bronson and James T. Soutter, of the city and State of New York, conveying to them (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also conveying to them the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Milton, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed, and is now in full operation, together with the equipments and all other things pertaining or which may hereafter pertain to the roads so conveyed, or either of them, reference to which deed is hereby had and made for a more full description of its contents.

"In witness whereof, said railroad company has hereto affixed its [SEAL.] corporate seal, and caused the same to be signed by its president and secretary, this first day of September, in the year of our Lord 1857.

"——— ———, *President.*

"——— ———, *Secretary.*

"Registered and countersigned this day of , 185 .

"——— ———, *Trustees.*"

Exhibit O. H. L. PALMER.

261 And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this deed witnesseth that said railroad company, in consideration of the premises and the sum of one dollar paid by

said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said parties of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed and is now in full operation, including all and singular the several tracts, pieces or parcels of land which now are or may hereafter be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be part of or appertain to said railroads or either of them; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads or either of them, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or used in connection with said railroads or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland aforesaid; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired
262 hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped.

Said railroad from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars, and the next forty miles of said road westward of the eighteen miles is subject to a second mortgage of two hundred thousand dollars:

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances and all and singular the

rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages, to the said parties of the second part and the survivor and successor of them, and their and his heirs and assigns forever, as joint tenants and not as tenants in common; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustees are hereby authorized in their discretion, either in person or by their attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income
263 and profits thereof, and to sell all and singular said railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company, of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for twelve weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case the interest in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustees, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, shall proceed to make such sales and conveyances as are above mentioned.

Third. Said railroad company covenants and agrees to and with said trustees, and the survivor and successor of them, that said company will from time to time during the continuance of the trust make, execute, cause to be duly recorded, and deliver to said trustees all

such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this deed to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed; and the trustees assume
264 no duty or responsibility on those subjects or any of them, nor in relation to any other matter or thing except as is herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustees; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will from time to time pay all costs, charges, expenses, and compensation of the trustees in, about or for the execution of the trust, and will in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they may sustain or be put to in consequence of accepting the trusts, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustees.

Seventh. The trustees are hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustees be responsible for anything short of gross negligence or wilful default in the discharge of any of their duties; nor shall either of the trustees be answerable for the acts, omissions, or defaults of his associate.

Eighth. All moneys which may be received by the trustees under the trust, after deducting therefrom all costs, counsel fees, charges, and other expense of the trustees, and their compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust; and the surplus, if any, shall be paid to the said railroad company.

Ninth. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of

his associate or of the railroad company, reasonable notice being first given to said trustee. Either of the trustees may resign his trust and be thenceforward discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable
265 notice to the president or secretary of said railroad company and the other trustee, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court, on reasonable notice to the other trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had been the original trustee and had executed this deed.

Tenth. Said trustees hereby accept and covenant and agree to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal and caused the same to be subscribed by its president and secretary, and the trustees have subscribed their names and affixed their seals, the day and year first above written.

[SEAL.] BYRON KILBOURN,
President of the Railroad Company.
JACKSON HADLEY,
Secretary of the Railroad Company.
[L. S.] GREENE C. BRONSON,
[L. S.] JAS. T. SOUTTER, *Trustees.*

Witness to the execution by Byron Kilbourn and Jackson Hadley:
WM. C. FORD.
H. L. RICHARDS.
Witness to the execution by Greene C. Bronson and James T. Soutter:
R. H. LOWRY.
H. W. FORD.

Copy of acknowledgment.

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered, that on this seventeenth day of August, one thousand eight hundred and fifty-seven, before me, the undersigned, Wm. Cleveland Ford, a commissioner, resident in the city of New
duly commissioned and qualified by the executive authority,
266 and under the laws of the State of Wisconsin, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Byron Kilbourn, Jackson Hadley, Greene C. Bronson, and James T. Soutter, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof, by them sealed and subscribed, to be their free act and deed for the uses and purposes therein mentioned.

In witness whereof, I have set my hand and affixed my official seal the day and year aforesaid.

WM. CLEVELAND FORD.
Commissioner for Wisconsin in New York.

Copy of certificate of recording indorsed on the back of the deed.

SECRETARY'S OFFICE, *Madison, August 21st*, 1857.

Received for record, and recorded in book of Railroad Mortgages, on pages 234, 235, 236, 237, 238, 239. Received at 5 o'clock p. m.

D. W. JONES, *Secretary of State.*

Certified copy of resolutions of the directors of the company authorizing the trust, &c.

Resolved, That the company, for the purpose of carrying forward its legitimate operations, will issue its bonds to the amount of one million of dollars, each for the sum of one thousand dollars, to be numbered from number one to number one thousand; all of said bonds shall be expressed to be for money borrowed for the construction of their roads, and shall be payable to the bearer thereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York, semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or cou-
267 pons to be thereto annexed; said bonds shall be convertible into the capital stock of the company, estimating both the bonds and stock at par, at any time within five years from the date thereof. All of said bonds shall bear date on the first day of September, 1857, and be signed by the president and secretary, and have affixed to them the corporate seal of the company; and the said president and secretary are hereby authorized and directed, for and in behalf of the company, to sign the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

Resolved, That for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed, bearing date at such time as the same can conveniently be executed by the respective parties thereto, between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees, parties of the second part, which deed of trust shall be in the form following, to wit:

[Here follows a copy of the deed, excepting the date, signatures, seals, acknowledgment, &c.]

Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereto affixed its corporate seal, and by being subscribed by the president and secretary; and the said president and secretary are hereby authorized and directed, for and in behalf of the company, to subscribe the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same; and when said deed of trust shall also be duly executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded without unnecessary delay, in such places and manner as the laws of this State may require, for the purpose of making the same a com-

plete and perfect security in favor of the trustees and the persons who may become the holders of the bonds.

Resolved, That the president of this company be, and hereby is, authorized to sell and dispose of all or any portion of an issue of one thousand bonds of this company of one thousand dollars each, amounting to one million of dollars, to bear date September 1st, 1857, payable September 1, 1870, at the Bank of the Republic, in the city of New York, bearing interest at the rate of eight per cent. per annum, payable on the first days of March and September in each
268 year, which are issued under and secured by a deed of trust of this company to Greene C. Bronson and James T. Soutter, the execution of which bonds and deed of trust is authorized by resolutions of the board of directors, adopted this 8th day of August, 1857, and the said president is authorized to sell the said bonds, or any of them, at the rate of eighty per cent. of their amount, payable half in cash and half in the stock of the company at par, or upon such other terms as he may deem proper.

Resolved, That a copy of these resolutions, duly certified under the seal of this company, be delivered to the trustees in said deed of trust.

I hereby certify the foregoing to be a true copy of a series of resolutions adopted by the board of directors of the La Crosse and Milwaukee Railroad Company, in session this eighth day of August, A. D. 1857.

In witness whereof, I have hereunto set my hand and *and* affixed the corporate seal of the La Crosse and Milwaukee R. R. Co.

[SEAL.] JACKSON HADLEY,
Secretary of the La Crosse and Milwaukee Railroad Company.

269 *Exhibit P.—Trust deed.—Barnes mortgage.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit.

"No. —. United States of America, State of Wisconsin. $——.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of
dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and

eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in progress of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents.

270 And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustees is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

"In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

"————, *President.*

"————, *Secretary.*

"Registered and countersigned this 185 .

"————, *Trustee.*"

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are, or hereafter may be or constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and

other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements and utensils and other personal property which have been or may hereafter be procured for or used in
271 connection with said railroad; and also all and singular the rights, liberties and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed, if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject nevertheless to liens already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix: to have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to

use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent
272 or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustee and said railroad company, of, in and to said property, rights, liberties, privileges and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to the said trustee, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either

exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds
273 shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, and expenses, and compensation of the trustee, in, about, or for the execution of the trust, and will in all things keep him fully identified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be put to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sum as from time to time the same shall be paid; the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased belonging to said sinking fund shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable

notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, such resignation, after
274 reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed [SEAL.] its corporate seal and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal, the day and year first above written.

La Crosse and Milwaukee Railroad Company,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee—

CLARK B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who exe-
275 cuted the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above named cor-

poration, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood
276 L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Rail-

road Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

Exhibit No. 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed
277 by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much lands in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case

be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other, and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed then another like quantity of land hereby granted may
278 be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years no further sales shall be made, and the land unsold shall revert to the United States.

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road under the direction of the Post Office Department at such price as Congress may by law direct. *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same. Approved June 3, 1856:"

And whereas the legislature of the State of Wisconsin subsequently passed an act approved October 11, 1856, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company to execute the trust created by an act of Congress

entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856.

"The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

"SEC. 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route by the way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the same rights privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

"SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

279 "SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other

Railroad Company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

"SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present and prospective, of this State in or to any and all the lands granted by the government of the United States to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled 'An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads,' approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the
280 manner following, that is to say: whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company; and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of

any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

"SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

"SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present
281 charter; and, in condition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasury of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and

for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate and effects of said company, whether real, personal or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees and judgments against the said company. The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real personal or mixed, held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company,
and all the appurtenances and stock thereof, for all dues that
282 may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

"SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

"SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water-craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water-craft as it may require.

"SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

"SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to construct, or any part of it, upon or over any route, upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad company shall take, injure or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured or destroyed, whatever the same is reasonably worth; such payment to be made in money, bonds, stock or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall
283 appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

"SEC. 11. This act and all grants herein contained shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

"SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

"SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this

act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

"SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

284. "SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

"SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force."

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company, of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two million of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of Railroad Mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed

to said William Barnes, party of the second part, as trustee for the holders of said bonds, as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces or parcels of land which constituted or might thereafter constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties and franchises, as by reference thereto will more fully and at large appear:

And whereas, also, the said indenture contained a covenant
285 and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises therein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles; and also the railroad of said company commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given, to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee

and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made, or to be built or made hereafter; and also all and sin-
286 gular the locomotive engines and other rolling stock, and all the other improvements of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured or used in connection with said railroads; and also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description. And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature which may be owned or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part

and parcel thereof, and also all the property, real, personal, and mixed, now vested or required, or hereafter to be vested or
287 acquired; and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed or intended to be conveyed unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, estates, or corporations lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment, at maturity, of the principal sum mentioned in any of said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profit thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or
288 purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, or interest, whether legal or equitable, of the said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction notice of such intended sale shall be published once in each week, *for three weeks* at the least, in two newspapers published in the city of New York and in a newspaper published

in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee
289 be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge any of his duties.

And it is hereby expressly declared, convenanted and agreed by the said railroad company, that the provisions herein contained for the security of said bonds are in addition to the provisions, liens and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions of omis-

sion to act under this indenture, in the same manner as if all the provisions thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.]

La Crosse & Milwaukee Railroad Company, by—

N. P. STANTON, *President.*

LOCKWOOD L. DOTY, *Secretary.*

WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.

T. W. BEAVER.

Signed, executed and delivered in our presence. as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.

T. W. BEAVER.

Signed, sealed, executed and delivered in our presence, as to William Barnes, the said trustee.

JOHN C. WHITE.

ISAAC EDWARDS.

290 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. Third street, in the city of Milwaukee, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,

Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

291 In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. 71 State street, in the city of Albany, [SEAL.] the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded September 1st, 1858, at 8 o'clock a. m.

292 *Exhibit Q.—Western division foreclosure bill.*

District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND Shepard Knapp, trustees, &c.,
against
LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis.

293 To the judges of the circuit court of the United States for the district of Wisconsin:

Greene C. Bronson, James T. Soutter, and Sheperd Knapp, trustees, as hereinafter mentioned, all of whom are residents of the city of New York, and citizens of the State of New York, bring this their bill against La Crosse and Milwaukee Railroad Company, a corporation duly established under the laws of the State of Wisconsin, J. Albert Helfenstein, trustee, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Tu ten, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, all whom are residents and citizens of said State of Wisconsin; and Selah Chamberlain, who is a citizen and resident of the State of Ohio; Newcomb Cleveland, who is a citizen and resident of the State of Illinois; Joshua Hathaway, who is a citizen and resident of the State of Georgia; and William Gemmell, who is an alien, and a resident of Scotland, in the kingdom of Great Britain, and a subject of the Queen of Great Britain; and thereupon your orators complain and say that the several actions and doings hereinafter stated and set forth, so far as they purport to be the acts or doings of your own orators, are true of their own knowledge; and as to all the other matters and things hereinafter stated and set forth, your orators are informed, and verily believe that the same are true.

294 Under and in pursuance of an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the La Crosse and Milwaukee Railroad Company," approved April 2, 1852,

the La Crosse and Milwaukee Railroad Company became, and was a body politic and corporate by that name and style, with all such powers, rights, privileges, franchises and immunities as are mentioned in said act, and particularly with the power, right, privilege, and franchise of constructing and using a railroad in said State of Wisconsin, from La Crosse, in the county of La Crosse, to some point in the city of Milwaukee, a distance of about two hundred miles; which said company has ever since had, and still has its office and principal place of business in said city of Milwaukee, and, as your orators are advised and believe, said corporation is a citizen of the State of Wisconsin within the meaning of the Constitution and laws of the United States relating to the jurisdiction of the federal courts.

By several other acts of said legislature relating to said company, and by acts concerning or relating to railroad companies in general, in said State of Wisconsin, all passed subsequently to said act of incorporation, and before the making of the trust deed hereinafter mentioned, said company became entitled to the additional powers, rights, privileges, franchises, and immunities mentioned in said several acts. To all of which said acts or statutes, including the original act of incorporation, and also to an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3, 1856, and being chapter 43 of the laws of 1856, your orators hereby refer, and pray that the same may be taken and received as part of this bill of complaint, as fully as if the same were herein recited and set forth at large.

Among the acts to which reference is above made, your orators particularly refer to said act of Congress, by which, among other things, certain lands were granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, and from thence to the west end of Lake Superior, and to Bayfield; and to the act of the legislature of Wisconsin, approved October 11, 1856, by which said company was authorized and empowered, among other things, to construct and operate a railroad from Madison, in the county of Dane,
and from the village of Columbus, in the county of Columbia,
295 by the way of Portage City, to St. Croix river or lake, and from
thence to the west end of Lake Superior, and to Bayfield; and by which act all the lands which had been granted to said State of Wisconsin by the government of the United States, to aid in the construction of the railroad in question, were, upon certain terms and conditions therein mentioned, granted to said La Crosse and Milwaukee Railroad Company, which said act was accepted and agreed to by said company, within five days after the passing of the same, to wit, on the 11th day of October, 1856, by a resolution adopted by the directors of said company, and a copy of which resolution, duly certified by the secretary of said company, under its corporate or common seal, was within said five days, and on the day last mentioned, deposited in the office of the Secretary of State of said State of Wisconsin.

Soon after the passing of the original act of incorporation, said com-

pany was organized and commenced the construction of the railroad therein mentioned, from La Crosse to Milwaukee, and continued said work until the making of the trust deed hereinafter mentioned, at which time said company had completed and put in operation a portion of the road, from a point in the city of Milwaukee to Portage City, or near that place, a distance of about ninety-five miles.

On or about the thirtieth day of December, in the year of our Lord 1856, the board of directors of said company adopted resolutions to make the trust deed to your orators, and to issue bonds as hereinafter mentioned; a true copy of which said resolutions (with the exception of that part of the second resolution which follows the words "Now, therefore, this deed witnesseth," which part is in the same words with the corresponding part of said trust deed, and including all the remaining part of said deed down to the words, "In witness whereof,") is hereunto annexed, and marked Schedule A, and which resolutions your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and on or about the thirty-first day of December, in the year of our Lord 1856, said La Crosse and Milwaukee Railroad Company made its certain trust deed of that date, in the nature of a mortgage, between said company as party of the first part, and your orators as parties of the second part; which deed was duly
296 sealed with the corporate or common seal of said company, and subscribed by the president and secretary of said company, and was also subscribed by your orators, and delivered said deed to your orators, by which said deed said company, after reciting at large said act of Congress, and said act of the legislature of Wisconsin, of the 11th of October, 1856, and after also reciting the determination of the company to borrow a sum of money not exceeding ten million of dollars, and to issue the bonds of the company for the repayment of the said money, the form of which bonds was recited and set forth at large in said deed; and after also reciting the determination of the company to secure the payment of the bonds in the manner therein provided, did, for the purpose of securing the payment of said bonds, and the interest warrants or coupons thereto annexed, and upon the trusts in said deed mentioned and contained, grant, bargain, sell, convey, and confirm to your orators all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the railway turnouts, engine-houses, workshops, depots, and other buildings, and all the lands and real estate which then constituted, or might thereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix river or lake, and from Portage City to La Crosse, and all the other property, real and personal, mentioned in said deed, and also all the rights, liberties, privileges, and franchises of said company relating to said roads, and all the lands granted or intended to be granted to said company under or by virtue of said act of Congress and said act of the legislature, so far as said lands pertained or were applicable to the construction of said road from Madison, by way of Portage City, to St. Croix river

or lake; to have and to hold the same to your orators, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common, in trust, nevertheless, and upon the trusts, terms, and conditions in said deed expressed, as by said in part recited deed now in possession of your orators, and ready to be produced as the court shall direct, will more fully and at large appear; a true copy of which said deed, with the exception of said act of Congress and said act of the legislature of the State of Wisconsin, of the 11th of October, 1856, which are therein recited at large, is hereunto annexed, and marked Schedule B, and which copy your orators pray may be taken and received as a part of this their bill of complaint; which
297 said trust deed, after having been duly acknowledged by all the parties thereto, was duly recorded in the office of the secretary of state of said State of Wisconsin, on the thirteenth day of January, in the year of our Lord 1857, in the book of Railroad Mortgages, pages 92 to 108, inclusive, reference to which said record is also hereby had and made.

Afterwards, on or about the first day of February, in the year of our Lord 1857, said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in said trust deed, and sealed the same with the corporate or common seal of said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bond on the first day of February, in the year of our Lord 1877, with interest at the rate of seven per centum per annum, payable in the city of New York, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons, to said bonds annexed, interest warrants or coupons for the payment of said interest at the times above mentioned were annexed to each of said bonds, and all of which bonds were severally for the payment of the principal sum of one thousand dollars, except one hundred bonds, which were severally for the payment of the principal sum of five hundred dollars. Parcels of said bonds were from time to time registered and countersigned by your orators; and the schedule hereunto annexed, and marked C, shows the several times when such registry and countersigning were made, with the numbers and denomination of the bonds so registered and countersigned on each occasion, which schedule your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and about the several times when said bonds were so registered and countersigned by your orators, said company sold, issued, and delivered said bonds to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the bearers and holders of said bonds, and entitled to the moneys therein mentioned and agreed to be paid. And the bonds so made, registered, and countersigned, and so sold, issued, and delivered, amounted in the aggregate to four millions of dollars of principal

money, and no more, and have (or most of them) come by
298 transfer into the hands of a large number of persons, some of whom are unknown to your orators, and are too numerous to be made parties to this action

After two thousand five hundred of said bonds of one thousand dollars each, amounting to two and a half million of dollars, had been so sold, issued, and delivered, and on or about the twenty-eighth day of January, in the year of our Lord 1858, said La Crosse and Milwaukee Railroad Company, in pursuance of its covenant in said trust deed, for further assurance, and for the purpose of better and more effectually securing the payment of the bonds which had already been issued, and such bonds as should thereafter be issued, to the amount, in all, of four millions of dollars, made its certain indenture or deed of that date, sealed with the corporate or common seal of said company, and subscribed by its president and secretary, and delivered said indenture or deed to your orators; and thereby said company did grant, covenant, and agree to and with your orators as is stated and contained in said indenture or deed; a true copy of which said indenture or deed is hereunto annexed, and marked Schedule D, to which your orators refer, and pray that the same may be received and taken as a part of this their bill of complaint; which said indenture or deed, after having been duly acknowledged, was duly recorded in the office of the secretary of state of said State of Wisconsin, in the book of Railroad Mortgages, on page 321 to 326, both inclusive, on the 11th day of February, 1858; to which record your orators also refer for the contents of said indenture.

Soon after the making of said trust deed, and in January, 1857, said company commenced the construction of that part of said road from La Crosse to Milwaukee which lies or is situate between La Crosse and Portage City, and completed the same from Portage City to La Crosse, a distance of about one hundred and four or five miles, in the month of October, 1858. A part of the road so constructed, to wit, that part which lies or is situate between Portage City and Tomah, otherwise called The Junction, a distance of about sixty-one miles, is also part and parcel of said road from Madison, by way of Portage City, to the St. Croix river or lake; to aid in the construction of which lands were granted to the State of Wisconsin and to said company, as hereinbefore mentioned. But neither said company nor your orators has or have obtained any deed or other evidence of title to any portion of said lands, or anything further than may be
299 found in the act of Congress and the act of the legislature of Wisconsin, of the 11th of October, 1855, hereinbefore mentioned. The governor of said State of Wisconsin has refused, and still refuses, to give the certificate required by said act to the Secretary of the Interior, and wholly denies that either said railroad company or your orators are entitled to any lands by reason or on account of having constructed said road from Portage City to Tomah, as hereinafter mentioned.

About the first of October, in the year 1857, one Selah Chamberlain, who, for several years last past, has resided most of the time in the State of Wisconsin, and who, if not a citizen of that State, is a

citizen of the State of Ohio, under some agreement or arrangement between himself and said railroad company, made subsequently to the right, title, and lien of your orators, and in terms subject and subordinate to the right, title, and lien of your orators, entered into the possession, use, and enjoyment of all that portion of the railroad of said company which had then been completed, which portion extended from the city of Milwaukee, westward, to and beyond Portage City, and from time to time, as sections of the road further west were completed, entered into the possession, use, and enjoyment of the same; and ever since said railroad was completed to La Crosse, as above mentioned, has been, and still is, in the exclusive possession, use, and enjoyment of the entire road from Milwaukee to La Crosse, with all things appertaining to the same; and said Chamberlain, during all the time aforesaid, has taken and received to his own private use and benefit, and still does take and receive to his own private use and benefit, all and singular the rents, issues, profits, and income of said railroad, with its equipments and appurtenances.

On the first day of August, in the year 1858, said railroad company utterly failed and made default in the payment of the half year's interest which then became due and payable on said bonds, and wholly neglected and refused to pay the interest warrants or coupons which became due and payable on that day; which said default in payment has ever since continued, and no part of the interest which should have been paid on said first day of August has ever been paid by said company. A small number, about forty or fifty, of the interest warrants or coupons which became due on said first day of August were, within a few month afterwards, surrendered or delivered by bondholders to some officer of the company, on some security or engagement by the company to pay the amount in future; but such
300 payment has not been made, nor have said interest warrants or coupons ever been cancelled or destroyed.

On the first day of February, in the year 1859, and again on the first day of August, in that year, said company utterly failed and made default in the payment of the interest, interest warrants, or coupons, which became due and payable on those days, respectively, and said company never has paid the whole or any part of the moneys which, according to the tenor and effect of said bonds, should have been paid on those days; and ever since said first day of August, 1859, the amount of interest in arrear and unpaid on said bonds has exceeded the sum of four hundred thousand dollars.

Said company has not acquired title to all the lands which constitute the site of the road from Portage City to La Crosse, nor to all the lands used for depot, engine, station, and other buildings, pertaining to said road; the road was not constructed in a substantial or enduring manner, and is continually suffering deterioration from time and use, and said road, with its appurtenances, is not, in the judgment of your orators, worth more than the sum of one million of dollars. And should your orators obtain said lands granted by Congress and the legislature of Wisconsin, so far as the same are or may be applicable to said road between Portage City and Tomah, as

above mentioned, it would not add more than half a million of dollars to the security of the bondholders, the lands in question being of poor soil and quality, and of little value as compared with other lands in the same State. Said railroad company now is, and for a long time past has been utterly insolvent and wholly destitute of property; said Chamberlain is also in insolvent circumstances; and, in any event, the bondholders will lose more than half, and probably fully three-fourths of the moneys due to them from said company as such bondholders, and the longer the bondholders are delayed in obtaining possession of said road from Portage City to La Crosse, and getting into the receipt of the income and profits of the same, the greater their loss will be.

On or about the twenty-third day of August, 1859, your orators, by their attorney and agent, demanded of said Selah Chamberlain the possession and enjoyment of said railroad from Portage City to La Crosse, with all things appertaining to the same; but said
301 Chamberlain utterly refused, and ever since has neglected and refused to surrender the possession of said road, or its equipment or appurtenances, to your orators, and still continues to use and enjoy said road with its appurtenances, and to take and receive the income and profits of the same to his own private use and benefit.

J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthof, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, have or claim to have some interest in or lien upon the said mortgaged premises, or some part thereof; which interest or lien, if any, has accrued subsequently to the lien of said mortgage to your orators.

No proceedings at law have been had, nor any suit or action commenced, by or on behalf of your orators, or any holder of any of the bonds of said company, secured by the mortgage aforesaid, or any or either of them, or any interest unpaid or accrued thereon, except only this action.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises, at and by the strict rules of the common law, and are only relievable in a court of equity where matters of this kind are properly cognizable and relievable, your orators therefore pray the aid of this honorable court, and that the La Crosse and Milwaukee Railroad Company may be decreed to pay to your orators said principal sum of money above mentioned, with the arrears of interest now due, or hereafter to become due and payable thereon, together with the costs and charges in this behalf expended; and in default thereof, that said defendants above named, and all persons claiming and to claim under them, or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of re-

demption and claim of, in, and to said mortgaged premises, and every part thereof; and may deliver over unto said complainants the
302 deeds, demises, and writings relating to or concerning all same; and that all and singular said mortgaged premises, with the appurtenances, property, and effects in said mortgage described, may be sold under the decree of this court, and that out of the money arising from the sale thereof your orators may be paid the principal sum due on said bonds of the said the La Crosse and Milwaukee Railroad Company, and all interest money due and to become due thereon, together with their commissions or compensation, and all costs and charges by them in this behalf sustained, or that they may have such other or further relief in the premises as may seem proper, and shall be agreeable to equity and good conscience; and that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on those bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained; that your orators, as trustees as aforesaid, may be let into the possession of the said railroad from La Crosse to Portage City, and the incomes, tolls, and profits of the same; and also all the depots, machine-shops, station-houses, and other real estate, equipment, and appurtenances connected with that part of the railroad of said last-mentioned company which lies between Portage City and La Crosse, at the date of said first-mentioned mortgage, or at any time since, and also all the other property included in and covered by said mortgage.

And as to the several persons above named who are properly parties to this bill of complaint, and not citizens of the State of Wisconsin, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties, if they shall come within such jurisdiction, and that a receiver may be appointed according to the course of practice of this court, and with the usual powers of receivers in like cases of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings of said defendants, the La Crosse and Milwaukee Railroad Company, or said Chamberlain, as far as relates to said railroad from La Crosse to Portage City.

May it please your honor to grant unto your orators the people's writ of subpœna, to be issued under the seal of this court, directed to said defendants, respectively, therein, and thereby command-
303 ing them on a certain day, and under a certain penalty, to be and appear before the judge of this honorable court, then and there to answer this bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

GREENE C. BRONSON,
JAS. T. SOUTTER,
SHEPERD KNAPP, *Trustees.*

CARY & PRATT, *Complainants' Solicitors.*
CLARKSON N. POTTER, *of Counsel.*

[illegible] 277—16

STATE OF NEW YORK, *City and County of New York, ss:*

On this 30th day of November, 1859, personally appeared before me Greene C. Bronson, James T. Soutter, and Sheperd Knapp, known to me to be the plaintiffs in the above action, who, being by me severally sworn, did depose and say, the said Bronson, that he had read the foregoing bill of complaint; and the said Knapp and Soutter, that they had heard the same read respectively, and that they respectively knew the contents thereof, and that the said bill of complaint is true of their own knowledge, except as to the matters which are therein stated to be upon their information and belief, and as to those matters they severally believe it to be true.

[L. S.] ALEX. OSTRANDER,
Commissioner for Wisconsin in New York, as witness my hand and official seal the day and year aforesaid.

Exhibit Q. H. L. PALMER.

307 *Exhibit R.—Appointment of receiver in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according, to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of April, A. D. 1860. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the eighteenth day of May, A. D. 1860, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.* } In equity.

The rule and motion of the complainants for the appointment of a receiver in this cause having been argued by Mr. Potter for the complainants, and by Mr. Lynde and Mr. Emmons for the defendant, Chamberlain, and submitted: On consideration whereof, it was ordered and decreed, and this court doth hereby order and adjudge, that the said complainants, or such one of them as they may select, be, and he or they are hereby, appointed receiver, as hereinafter mentioned, and be at once put into possession of the mortgaged
308 property; but in case said complainants, or either of them, decline to act as such receiver, then, on filing such refusal, signed by them or their counsel, it is hereby further ordered that Hans Crocker be, and he hereby is, appointed receiver (in their stead) of all and singular the railroad from Madison, by way of Portage City, to St. Croix river or lake, and from Portage City to La Crosse, mentioned in the bill of complaint, with all and singular the furniture, fixtures, and appurtenances, engine-houses, workshops, depots, and other buildings and improvements, engines, cars, rolling stock, ma-

terials, equipments, tools, implements, utensils, and all and singular the personal property, rights, liberties, privileges, and franchises of the said railroad company relating to said road, or which have been procured for or used in connection therewith, or either of them, and all other the property, rights, and effects, franchises, and interest mentioned in the said deed of trust to the complainants which this action is brought to enforce.

And it is further ordered that the said trustees, or such one of them as may accept, and if not, then that the said Hans Crocker, before entering on his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that they or he will duly manage and conduct said railroad and mortgaged property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements, in accordance with the rules and practice and direction of this court.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said trustees, or such of them as they shall elect to act as receiver; and in case they decline to so act, then to the said Hans Crocker, as such receiver, all and singular the said railroad, from Madison to Portage City, and from Portage City to La Crosse, and all other real estate and premises in said deed of trust to complainants mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belonged to the La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, or at any time thereafter, which may have been procured for or used in connection with said mortgaged premises, or any thereof, which may have come to the hands of the said defendants respectively, or over which they have
309 control; and that such receiver take possesion thereof, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation and use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership and this application, and the costs and expenses of operating and maintaining or preserving and keeping said railroad, and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order and direction of this court.

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

June 7, 1860.—This day came the complainants, by their counsel, Mr. Cary, and declined to act as receiver, by virtue of the order of this court, made on the 18th day last, as by their declination in writ-

ing filed. And the official bond of Hans Crocker, as receiver, approved and filed.

Exhibit R. H. L. PALMER.

310 *Exhibit S.—Order of reference in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the seventh day) of January, A. D. 1861. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-third day of the said term, to wit, on the eleventh day of March, A. D. 1861, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMpany, J. Albert Helfenstein, trustee, *et als.*
} In equity.

This day came the parties, by their counsel, and on consideration of the pleadings, proofs, and the arguments of counsel, it is ordered by the court that reference be and hereby is made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hathaway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust, and the real amount of said bonds.

And the said masters shall ascertain and report the amounts of the several judgments of Newcomb Cleaveland, Sebre Howard, and of Graham & Scott.

And it is further ordered that the said master report the amount of the specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits *and credits*, and of such as should be made to his claims, including his receipts of revenue of the whole road, without regard to its divisions by the mortgages; and that they may examine the said Chamberlain under oath, and require him to produce his books, and they may also take additional testimony to that on file.

And it is further ordered that the said master ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages respectively.

March 21, 1861.—Ordered by the judge that Increase A. Lapham be and hereby is appointed a special master in this case in the place of Joshua Hathaway, who declined serving.

Exhibit S. H. L. PALMER.

311 *Exhibit T.—Masters' report in western division, foreclosure cause.*

District court of the United States for the district of Wisconsin.

GEENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp, trustees, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *etals.* } In equity.

To the Hon. A. G. Miller, judge:

In pursuance and by virtue of an order of reference made in this cause of the 11th day of March, A. D. 1861, and of an order supplementary thereto, made on the 21st day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase I. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matter referred by the said order, in addition to that on file, which proofs are herewith returned, consisting of copies of depositions and of exhibits, the originals whereof are returned by us and filed in this court in the other cause depending in said court, in which the said depositions and exhibits
312 have been taken, on an order of reference and order supplementary thereto, made of the same dates as above; in which cause Greene C. Bronson and James T. Soutter, trustees, are complainants, and the said La Crosse and Milwaukee Railroad Company and others are defendants.

We further report that we have passed over the line of the railroad of the La Crosse and Milwaukee Railroad Company, and have examined those portions thereof where any of the work done by the defendant, Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed. Previous to which, we gave notice of our intended examination to the counsel for the defendant, Chamberlain, and to the counsel for the defendants, Howard, Graham, and Scott, and the Milwaukee and Minnesota Railroad Company, informing them that they and engineers selected by them were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Mr. Benjamin H. Edgerton, a civil engineer, whose testimony is among the depositions taken by us, as above stated.

We have ascertained and computed the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust to the complainants, set forth in the bill of complaint in this cause, and the real amount of the said bonds.

The real amount of those of the said bonds numbered from one to one thousand nine hundred and ninety-one inclusive, being 1,991 bonds first issued of one thousand dollars each, at one hundred cents on the dollar, is one million nine hundred ninety-one thousand dollars, ($1,991,000.) The interest thereon, from February 1, 1857, to the

date hereof, at seven per cent., is $638,779 17, (six hundred and thirty-eight thousand seven hundred seventy-nine dollars and seventeen cents;) of which sum there is due upon the coupons attached to said bonds, and payable in February and August of each year, the sum of six hundred twenty-seven thousand one hundred sixty-five dollars, which sum has been due since the 1st day of August, A. D. 1861.

The real amount of those of the said bonds numbered from one thousand nine hundred ninety-two to two thousand five hundred, both inclusive, being 509 bonds of one thousand dollars each, allowed at forty cents on the dollar, is two hundred three thousand six hundred dollars, ($203,600.) The interest thereon, from February 1st, 1857, to date hereof, at seven per cent., is $65,321 67. (sixty-five
313 thousand three hundred twenty-one dollars and sixty-seven cents.)

The real amount of the remainder of the said bonds, being 1,450 bonds of one thousand dollars each, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and one hundred bonds of five hundred dollars each, numbered from one to one hundred, both inclusive, allowed at forty cents on the dollar, is six hundred thousand dollars, ($600,000.) The interest thereon, from February 1st, 1857, to the date hereof, at the rate of seven per cent., is $192,500, (one hundred ninety-two thousand five hundred dollars.)

Thus the real amount of all the said bonds is $2,794,000, on which the interest unpaid to the date hereof is $896,600 84.

We have also ascertained the amount of the judgment of Newcomb Cleveland, mentioned in the said order, which is now equitably owned by the defendant, Selah Chamberlain. The same was rendered on the seventh day of October, A. D. 1857, for damages, $111,627 71; costs, $544 15. And there was paid thereon, under the order of this court, April 22, 1861, in full of interest and costs to that date, the sum of $28,801 92.

The interest on the amount then due, at seven per cent., from that date to June 29th, 1861, is	$1,455 56
Adding principal	111,727 71
The total due was	113,183 27
Upon which date was paid	10,000 00
Leaving due June 29th, 1861	103,183 27
Upon which the interest to July 18th, 1861, at seven per cent., is	381 20
The amount then due was	103,564 47
Upon which date was paid	20,000 00
Leaving due at that date	83,564 47
On which interest to the date hereof is	698 68
The amount due at this date is	84,263 15

Eighty-four thousand two hundred sixty-three dollars and fifteen cents.

314 We have also ascertained the amount of a certain jugdment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee county, on the 20th day of April, A. D. 1859.

There is due thereon at the date hereof, damages and costs	$3,718 60
Interest to the date hereof	614 60
The amount due at this date is	4,333 20

We have also ascertained the amount of a certain other judgment rendered in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee county, on the 20th day of April, A. D. 1859.

There is due thereon at the date hereof, damages and costs	$1,525 71
Interest to the date hereof	252 14
The amount due at this date is	1,777 85

We have also ascertained the amounts of the judgments of Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is included and embraced in the judgment rendered in his favor by this court (on the law side thereof) on the 28th day of November, A. D. 1859; on which last-named judgment there is due at the date hereof:

Damages and costs	$16,379 86
Interest to the date hereof	2,013 39
The amount due at this date is	18,393 25

We have ascertained the amounts of the judgements of the defendants, (Graham and Scott,) mentioned in their answer, filed in this cause; the amounts of their judgments rendered in the said circuit court are included and embraced in the judgment rendered in their favor by this court (on the law side thereof) on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date hereof:

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Damages and costs	$44,413 18
Interest to the date hereof	5,092 78
Amount due at this date	49,505 96

We have inquired into and ascertained the amount of the several specific claims of the defendant, Selah Chamberlain, and have taken and stated an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mort-

gages; and we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file. The account of the said Chamberlain, comprising the said claims, (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us on his behalf, is herewith returned, marked Schedule First. The paper marked Schedule Second, herewith returned, contains his account with the said La Crosse & Milwaukee Railroad Company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, and also the items and amounts disallowed by us, and also showing the amounts of his receipts, set-offs, and credits, and of such as should be made for his claims, including his receipts of revenues of the whole road; and showing also the balance due to him, including interest, at the date of this report, which balance we have ascertained to be four hundred eighteen thousand six hundred and sixteen dollars and seventy cents.

And we have made a separate statement, as part of said Schedule Second, of the real and just amounts due on the second day of October, A. D. 1857, on account of the items of indebtedness included in the judgment of the said Selah Chamberlain, rendered on that date, and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was, at that date, five hundred sixty-eight thousand nine hundred seventy-five dollars and seventy-seven cents, ($568,975 77.)

Of the several specific claims so allowed and stated in the said account is one under date of October 1st, 1858, for moneys paid by the said Chamberlain, on and before that date, in the con-
316 struction of the depot building of the said company at La Crosse, to the amount of $12,190 95
On which interest to this date is 2,489 00

Making the amount at this date 14,679 95

Which sum is secured to the said Chamberlain, who holds the title to the said building and the land on which it stands.

And another of the claims so allowed, under date of March 1st, 1859, is for moneys paid by the said Chamberlain to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its purposes, amounting to $3,236 52
On which interest to date is 566 38

Making the amount at this date 3,802 90

Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date

of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235 78.

And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased, and by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

In ascertaining the facts and amounts, and in making the
317 computations herein above contained and referred to, we have been guided by the opinions and instruction of this court communicated to us in connexion with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1st September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

Filed Oct. 7, 1861.
Exhibit T.
H. L. PALMER.

318 *Exhibit U.—Complainants' exceptions to masters' report in western division foreclosure cause.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER AND Shepherd Knapp,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.
} In equity.

Exceptions taken by the said complainants to the report of Winfield Smith as master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, to whom it was referred to ascertain, compute and report, among other things, as to the amount of interest really due upon and principal secured by the bonds issued under the deed of trust or mortgage given to your orators and described in the complainants' bill of complaint, and also to ascertain and report the whole amount of rolling stock on the whole

road, and which of the mortgages on said road covered and included said rolling stock.

1st. For that the said master and special masters have, in and by their said report, certified that the real amount of the bonds secured by the mortgage given to said complainants, numbered from 1992 to 2500, both inclusive, being 509 bonds of one thousand dollars each, was two hundred and three thousand and six hundred dollars, and that the interest thereon from February 1st, 1857, to the date of said report, at 7 per cent., was sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents; whereas the said master and special masters ought to have certified that the real amount of the principal of the said bonds was $509,000, and the interest thereon from February 1, 1857, to date of said report, at seven per cent., was $163,304 22.

2d. For that the said master and special masters have, in and by their said report, certified that the real amount of said bonds, numbered from 2501 to 3950, both inclusive, being 1,450 bonds of $1,000 each, and one hundred of said bonds of $500 each, numbered from one to one hundred, both inclusive, as allowed by them, was six hundred thousand dollars, and the interest thereon from February 1, 1857, to the date of said report, at seven per cent., was $192,500; whereas the said master and special masters ought to have certified that the real amount of principal of said bonds was $1,500,000, and the interest due thereon from February 1st, 1857, to the date of said report, at seven per cent., was $481,250.

3d. For that the said master and special masters have, in and by their said report, certified that the real amount of all the said bonds was $2,794,000, on which the interest unpaid to the date of said report is $896,600 84, making in all the amount of $3,690,600 84; whereas the said master and special masters ought to have certified that the real amount of principal unpaid of said bonds was $4,000,000, and the interest due and unpaid thereon $1,283,333 39, making in all the amount of $5,283,333 39.

4th. For that the said master and special masters have, in
319 and by their said report, certified that all the rolling stock on said road (except 40 box cars which are specially named in said report) was covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857; whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement of this suit, amounting to the sum of $53,600) was covered by and included in the mortgage given to the said complainants and described in the bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens, and that as to the rolling stock purchased by said receiver above mentioned $\frac{105}{200}$ thereof was covered by the mortgage described in the complaint, and that to that extent the

complainants' said mortgage was a first lien thereon; wherefore said complainants except to the said master and special masters' said report, and appeal therefrom to the judgment of this honorable court.

CARY & PRATT, *Solicitors for Complainants.*

Filed Nov. 2, 1861.

320 *Exhibit V.—Order of court on masters' report in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the second day of the said term, to wit, on the seventh day of January, A. D. 1862, the following proceedings were had:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.* } In equity.

This day came the parties, by their counsel, and on consideration of the several exceptions to the report of the masters and the arguments of counsel, it is ordered by the court that the first, second, and third exceptions of complainants to said report be, and hereby are, overruled.

321 And it is further ordered by the court that the fourth exceptions of complainants be, and is hereby, overruled, as to the forty box cars which are covered by this mortgage.

And it is further ordered by the court that, on said exception, the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars, is covered by and included in the first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or procured since the court has held possession by its receiver, costing $147,943 62, be applied to the said first mortgage, and the mortgage in this bill, in proportion to the net revenues on such portions of the road said mortgages respectively covered, since the appointment of the receiver.

And it is further ordered by the court that the sixth and seventh exception of Selah Chamberlain to said report be, and hereby are, allowed; and that the tenth exception of said Chamberlain to said report be, and hereby is, overruled.

And it is further ordered that the remaining other exceptions of said Selah Chamberlain be held by the court for further consideration.

Exhibit V.

H. L. PALMER.

322 *Exhibit W.—Decree in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Dietz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson.

323 In equity.

This day this cause came on to be finally heard at this term upon the bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John

H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendants, Selah Chamberlain, J. Albert Helfenstein, trustee, in a mortgage or deed of trust of said company defendants, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hooper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southerland, E. Haskell Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John J. Vanderbuilt, G. S. Boardman, and John Nicholson, and the replications thereto and proof,

324 and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report for interest on the bonds in the mortgage mentioned in this bill, numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds: and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage, numbered from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand six hundred dollars for principal of the sum; and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each, included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned in said mortgage, of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds—which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds, is found to be two millions seven hundred and ninety-four thousand dollars, be, and hereby is, confirmed.

And it is further ordered, adjudged, and decreed by the court that all and singular the mortgaged premises mentioned in the bill of

complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, and that
325 said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse, and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz: All and singular the several tracts, pieces or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made hereafter; and all the engine-houses, workshops, de-

326 pots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road; also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company;" with forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, cost-

ing one hundred and forty-seven thousand nine hundred and
327 forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when

complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that said sale be made at the post office in the city of Milwaukee, within this district, and that
325 said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse, and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz: All and singular the several tracts, pieces or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made hereafter; and all the engine-houses, workshops, de-

326 pots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road; also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company;" with forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, cost-

ing one hundred and forty-seven thousand nine hundred and
327 forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when

the same becomes due and payable at the time mentioned in said bonds and mortgage, the court may, upon petition of the complainants, or the holders of the said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition, and the subsequent proceedings thereon, and the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decree signed, recorded, and enrolled, January 13, A. D. 1862.

J. M. MILLER, *Clerk.*

Exhibit W. H. L. PALMER.

328 *Exhibit X.—Marshal's report of sale of the western division.*

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPERD Knapp, trustees, complainant,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shep-
329 hard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson, defendants. } In chancery

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby

report, that in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the 25th day of April, in the year 1863, at two o'clock, at the post office in the city of Milwaukee, then and there first offer for sale and sell at public auction the premises described in said decree, as follows, to wit: all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of Congress of the United States entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1857," so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, situate, lying and being in the State of Wisconsin, which were bid off by William Wallace Pratt and William H. White for the sum of one hundred and twenty-five thousand dollars, ($125,000) they being the highest and best bidders, and that being the highest and best bid made for the premises described.

330 And I there offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: all and singular the several tracts, pieces, or parcels of land which constitute the site of the road-ways, turnouts, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property which have been procured for or used in connection with said

roads, or either of them; and also all and singular the rights, liberties, privileges and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads, (of said rolling stock, forty box cars, numbered, respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or incumbrance; but the remainder of the above-mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned given by said La Crosse and Milwaukee Railroad Company,) together with the tools, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises and privileges of the said company, of, in, and to or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned granted by Congress to the State of Wisconsin,) and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, situate, lying and
331 being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White for the sum of two million six hundred and seventy-five thousand dollars ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids, and have paid to me the sum of two million eight hundred thousand dollars, as follows: Said sum is $1,001,932 on each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause. Said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three $\frac{8}{100}$ ($2,708,623 $\frac{08}{100}$) in bonds secured by said mortgages, as follows: Nineteen hundred and thirty-nine (1,939) of said bonds, numbered between 1 and 1991, inclusive, for one thousand dollars each; eighteen hundred and sixty-five (1,865) of said bonds for one thousand dollars each, numbered between 1992 and 3950, inclusive; and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive; and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents ($91,376 $\frac{92}{100}$) in cash; all of which amounts to $1,001,932 on the dollar of the principal of all the bonds outstanding and secured said mortgage.

DARIUS C. JACKSON, *U. S. Marshal,*
By W. J. JACKSON, *Deputy.*

Exhibit X. H. L. PALMER.

332 *Exhibit Y.—Confirmation of marshal's report of sale of western division.*

And afterwards, to wit, at a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twelfth day of said term, to wit, on fifth day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.*
} In equity.

This day came the parties, by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it is ordered by the court that said exceptions be, and hereby are, overruled.

And it is further ordered and decreed by the court that the said sale so as aforesaid made be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

Exhibit Y. H. L. PALMER.

333 *Exhibit No. 1.—Petition of Mil. and St. Paul Railway Co. for possession of whole road, and order of court May 7, 1863, for joint occupancy.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the seventh day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD Company *et als.*
} In equity.

This day came Mr. Cary, on behalf of the Milwaukee and St.
334 Paul Railway Company, and presented to the court its petition in writing as herein filed: "that it is a corporation duly organized by William Wallace Pratt and William H. White, the purchasers of the La Crosse and Milwaukee railroad and its appurtenances, at the marshal's sale under the decree of this court in this cause, by vir-

tue and in pursuance of chapter seventy-nine of the revised statutes of the State of Wisconsin concerning railroads.

That in pursuance of said sale and the confirmation thereof by this honorable court, Darius C. Jackson, the said marshal of the United States for the district of Wisconsin, on the fifth day of May instant, executed and delivered to said William Wallace Pratt and said William H. White a deed of said mortgaged premises.

That immediately thereafter said purchasers, William Wallace Pratt and William H. White, organized your petitioner as a corporation under and by virtue of the provisions of said chapter seventy-nine of the revised statutes of Wisconsin concerning railroads, and on the said fifth day of May instant filed their articles of association in the office of the secretary of state of the State of Wisconsin, a certified copy of which said articles of association are herewith shown to this court, and to which your petitioner prays leave to refer.

That afterwards, and on the 6th day of May instant, the said William Wallace Pratt and William H. White under their hands and seals executed and delivered to your petitioner, in due form of law, a deed of all and singular the said mortgaged premises aforesaid conveyed to them by the said Darius C. Jackson, marshal as aforesaid, which said deed is herewith shown to this honorable court, and to which for greater certainty your petitioner prays leave to refer.

And your petitioner further shows that Hans Crocker was appointed the receiver in this suit of said mortgaged property, and took possession thereof on the 11th day of June, in the year 1860, and your petitioner shows that the purposes for which he was appointed have been answered, and the duties of his office (save accounting and being discharged) are at an end, in consequence of a sale of the said mortgaged premises under the decree in this suit.

Your petitioner further shows that said Hans Crocker, receiver of said mortgaged premises, is also receiver of the eastern division of said La Crosse and Milwaukee railroad, to wit, from the city of Milwaukee to Portage City, appointed under certain judgment creditors'
bills filed against said La Crosse and Milwaukee Railroad Com-
335 pany, and also against the Milwaukee and Minnesota Railroad Company, and also in the foreclosure suit of Bronson & Soutter against said La Crosse and Milwaukee Railroad Company and others; that, as your petitioner is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said complainants, described in the bill of complaint in this cause, is a mortgage of the entire franchise to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and that the said mortgage is prior and superior to all the liens, claims, and incumbrances on said eastern division, by virtue of which said Hans Crocker, as such receiver, now holds and operates such eastern division of said road; that by the foreclosure of the complainant's said mortgage in this case, the sale and confirmation under said decree, the conveyance of the marshal to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization of your petitioner

by said purchasers under and by virtue of the provisions of chapter seventy-nine of the revised statutes of Wisconsin concerning railroads, and the conveyances by said purchasers to your petitioner of all and singular the said mortgaged premises, your petitioner has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railroad Company in running, operating, and controlling said railroad in its entire length from the city of Milwaukee to the city of La Crosse, and that such rights so to run, operate, manage, and control the same is prior and superior to the rights of any of the defendants in this cause, and prior and superior to the rights of the mortgagees in the mortgage to said Greene C. Bronson and James T. Soutter on the eastern division under which said Hans Crocker is acting as receiver, inasmuch as the said mortgage to the said complainants is prior in date and lien to the mortgage said to Greene C. Bronson and James T. Soutter.

And your petitioner is informed and believes that it is entitled, in virtue of the premises, to the possession, control, and management of the entire line of said railroad from the city of Milwaukee to the city of La Crosse, and to run, operate, manage, and control as a railroad the whole line of said road, subject to the obligation to account and pay over to said receiver the net earnings and income of said eastern division under the order and directions of this honorable court.

336 Your petitioner therefore prays that your honor will grant an order directing the said Hans Crocker, receiver as aforesaid, to deliver to your petitioner all and singular the said railroad from the city of Milwaukee to the city of La Crosse, its road-bed, track, and locomotives, engines, rolling stock, tools, implements, supplies, together with its depots, station-houses, engine-houses, and all other property belonging to said railroad or used in operating the same now in possession of or subject to the control of said receiver, together with its appurtenances, rights, and franchises thereto appertaining, and that your petitioner be let into the possession and enjoyment thereof, your petitioner hereby offering to account to said receiver for the net tolls and income of said eastern division under the direction and supervision of this honorable court, and to submit to such rules and regulations in respect thereto as this honorable court shall make and establish, and for such further and such other order as the court may see fit to grant.

And your petitioners will ever pray, &c.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

Whereupon it is ordered by the court (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie, objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse and the rolling stock and property specially described in the decree.

And it is further ordered by the court that a full and perfect inven-

tory be taken by the receiver of all rolling stock other than the forty box cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been procured by the receiver and now on hand, and that he make report of the same on the eighth day of June next.

And as, in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road as constructed and operated shall continue to be so operated, it is ordered by the court (reserving the right to rescind, change, or modify this order at any time hereafter) that the said Milwaukee and St. Paul Railway Company, and the receiver who continues to be the receiver of the eastern
337 end or division of said La Crosse and Milwaukee railroad between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company and the said receiver jointly employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company make, keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds in prior mortgages as heretofore.

Exhibit No. 1. H. L. PALMER.

338 *Exhibit No. 2.—Order of June 12, 1863, in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER AND Sheperd Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Abert Helfenstein, trustee, *et als.*

On consideration of the said petition of the Milwaukee & St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee & St.

Paul Railway Company all and singular the railroad between the
339 city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree, and also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree ; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court, that the said receiver be and hereby is discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

Exhibit No. 2. H. L. PALMER.

340 *Exhibit A A.—Contract between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain and S. H. Alden, made March 29th*, 1865.

This agreement, made this 29th day of March, 1855. between the La Crosse and Milwaukee Railroad Company, of the first part, and S. Chamberlain and S. H. Alden, of the second part, witnesseth, that the said Chamberlain and Alden, for and in consideration of the several stipulations on the part of the railroad company, hereinafter mentioned and set forth, hereby contract and agree to construct, for the said railroad company, a single-track railway, from Beaver Dam to Portage City, it being about thirty miles of main line ; all the side track to be paid for in addition to the main line, and at the same price per mile.

The work included in this contract is the grading, bridging, culverts, ties, chairs, spikes, and laying the track, which shall be laid on sub-grade, except when ballast is found on the sections, and by centre stakes, to be done in a substantial and workmanlike manner.

Grading.—The road-bed shall be graded fourteen (14) feet wide on embankments at sub-grade, and eighteen (18) feet in cuts ; the excavations and embankments are to have such slope as the engineer may direct, but not to exceed one foot and half (1½) horizontal to one foot vertical, and no waste earth shall be deposited within three (3) feet of the tops of the slopes of excavations, nor borrowing ditches to be dug within four (4) feet of the base of embankments. The said railroad company are to furnish ground convenient to waste earth upon from excavations, and to borrow earth from for embankments for the road-bed.

All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two (2) miles of the points where the structures are to be put in ; should stone be found within the above limits, the bridge, abutments, and piers shall be of rough masonry, with good beds and joints ; no backing shall be used of less thickness than four (4) inches unless required for levelling up. Com-

mon lime mortar shall be used in all bridge masonry; culverts shall be constructed of rough stone and without mortar.

Cross-ties.—The cross-ties are to be hewed or sawed, and are to be of red, white or burr oak, cedar, tamarack, spruce, Norway pine, black walnut or ash, and are to be six (6) inches thick, eight (8) feet long, and all to have a bearing surface of not less than seven (7) inches. The ties shall be laid in track two and one-quarter ($2\frac{1}{4}$) feet from centre to centre, and two thousand three hundred and forty-four (2,344) ties shall be used in every mile of track.

Track-laying.—The track to be laid in the usual way of laying a T rail track, with a common wrought-iron chair. The railroad company are to furnish the said Chamberlain and Alden with locomotive power, and a sufficient number of platform or suitable cars, for transportation of iron, chairs, spikes, ties, timber and other material required during the execution of this contract, free of all charge to the said Chamberlain and Alden; said Chamberlain and Alden to load and unload all such articles.

The right of way.—The said railroad company are to furnish the right of way at such points and at such times as may be necessary for the said Chamberlain and Alden to commence work on or before the first day of May next, and completed on or before the last day of December, 1856, ready for a train of cars.

The engineers of said road shall return to said Chamberlain and Alden the actual quantities of work done each month by their sub-contractors on each section of sub-contract. All materials purchased for the use of this road, or timber, ties or other material delivered anywhere on the line of the road between Milwaukee and the west end of this contract, shall be estimated the same as though they were delivered where they are to be used, and they shall be the property of the railroad company after being estimated and paid for, which shall be done on the first of each and every month. The railroad company, in consideration of the stipulations of the party of the second part of the work to be performed as herein set forth, doth hereby covenant and agree to pay to the said Chamberlain and Alden at the rate of twelve thousand (12,000) dollars per mile for each mile of road in track, and the like sum for each mile and fractional part of a mile of side tract. The payments on this contract are to be two hundred thousand (200,000) dollars of the company's first mortgage bonds, at eighty (80) cents on the dollar; two hundred thousand (200,000) dollars farm mortgage bonds, at seventy (70) cents on the dollar; seventy-five thousand (75,000) dollars Portage City bonds, at seventy (70) cents on the dollar, and the balance in the stock of the company at fifty (50) cents on the dollar. In case the company cannot obtain the Portage City bonds by the first day of July next, the company to pay cash instead of said bonds, at the rate of seventy (70) cents on the dollar, and the company to have the option to pay cash instead of said bonds, at the rate of seventy (70) cents on the dollar, and the company to have the option to pay cash instead of stock, at fifty (50) cents on the dollar, for any amount of stock beyond the amount, if sixty thousand (60,000) dollars, which may or might

be due or payable on this contract, as aforesaid. The first mortgage bonds to be deposited at the date of this contract, and the farm mortgage bonds to be deposited as follows : twenty-five thousand (25,000) dollars by the first day of May next, and the remainder by the first day of July next, to be placed in the hands of Messrs. Atwood & Co., bankers, New York ; but the second party shall have the right to sell the bonds at any time they may elect, and shall place the avail to the credit of this contract, to be drawn out on the orders from the treasurer of the company, payable to the order of the party of the second part. based upon the monthly estimates which shall be made out and delivered to the second party on or before the first day of each month, and sixty thousand (60,000) dollars in amount of stock, to be issued whenever required by the said Chamberlain and Alden, which shall be entitled to all dividends accruing from and after the first day of July next, in common with all other full paid stock ; provided, that said stock shall be applicable to payment on the last estimate to said Chamberlain and Allen, and that they shall
341 pay to said company, in cash, on the first day of January next, the amount which shall then be paid by said company as dividend thereon, to any parties who may then be holders thereof. It is further mutually agreed, by and between the parties to this contract, that the quantity of excavation and embankment on the portion of road embraced in this contract shall not exceed twenty thousand (20,000) yards per mile; and it is agreed that the quantities shall be as much below the above limits as practicable consistent with a proper regard for the location of the line and construction of the work; and due care shall be taken in the location of the line to produce the most favorable result in this respect. But if the quantity per mile should exceed twenty thousand (20,000) yards, the excess to be paid for as extra work as hereinafter provided. It is mutually agreed that all excavations from the cuts on the line of road shall be placed into embankment where it can be done within a reasonable haul, and if not hauled over five hundred (500) feet, shall be computed excavation or embankment only; but for each one hundred (100) feet additional haul, one cent per yard extra shall be added. The railroad company agree to furnish the iron rail of the T pattern, and deliver it to the second party as required for laying in track, and shall at all times keep a supply on hand at a convenient place to load on the cars.

The railroad company also agree to transport all materials required for the construction of the road over their line of road from Milwaukee to the end of their track, free of all charges. It shall also be done without delay at any time when required by the second party or their agents. It is also agreed that the contractors shall be passed free over the road during the time of its construction; and any of their agents necessary for their business shall be furnished with a pass from the superintendent; and laborers will be passed once out to the work on passes to be furnished by the contractors or their agents on any freight train or construction train of the company.

It is mutually agreed between the parties to this agreement that the farm mortgage bonds, which are to be paid on this contract, shall be taken on farms located on or near the line of the road, and east of Wisconsin river, and no mortgage shall be taken for more than two-thirds of the cash value of the farm, without estimating the increased value caused by the construction of the railroad. The titles shall be perfect, and the bonds duly executed, and at least twenty-five thousand (25,000) dollars of them shall be placed in the hands of Atwood & Co., bankers, New York, on or before the first day of May next, and the balance on the first day of July next, for the use of this contract. The Portage City bonds shall be duly executed and placed with Atwood & Co., as aforesaid, for the use of this contract. They shall bear eight (8) per cent. annual interest, payable in New York semi-annually; and the payment of both principal and interest, on both city and farm bonds, shall be guaranteed by the railroad company, and all bonds are to be convertible into the stock of the company at the option of the holder.

It is expressly agreed and understood by the parties hereto that the party of the first part is to pay all accruing interest upon all bonds now issued, or that may be issued, in pursuance of this contract, promptly, as the same may become due; and in the event of the failure to do so, then it shall be optional with the party of the second part to proceed with this contract to completion, or to stop all work and demand payment from said party of the first part, the same as if the whole had been completed: *Provided*, That the railroad company shall be entitled to a deduction for any work not actually done, at the same rates we may be under obligations to pay to our sub-contractors for the same or similar work.

It is further agreed and understood that should there be any rock, hard-pan, quicksand, or indurated clay or gravel, it shall be paid for as extra work; piling and timbering the same will also be paid for extra; and it is further agreed between the parties to this contract that if, in the course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement, or as to the manner of the construction of the work herein contracted to be done, such matters of difference shall be at once submitted to three disinterested persons to act in the premises; and should the parties not be able to agree upon the third person, the two first selected shall select a third; the three so chosen shall hear the parties and decide the matters submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision, as aforesaid, shall be irrevocable.

The price to be paid for extra work is to be as follows: For grubbing and clearing, three hundred (300) dollars per mile; common earth-work, thirty (30) cents per cubic yard; solid rock, one (1) dollar per cubic yard; hard-pan or indurated clay or gravel, fifty (50) cents per cubic yard; quicksand, one (1) dollar per cubic yard; piling and extra timber work, at such prices as shall be hereafter agreed upon; extra hauling, over five hundred (500) feet, to be one

(1) cent per cubic yard for each additional one hundred (100) feet as hereinbefore mentioned: *Provided,* That if the aggregate of earth, work shall fall short of the maximum of twenty thousand (20,000) cubic yards per mile, then twenty (20) cents per yard is to be deducted from the above-mentioned prices for rock, hard-pan, indurated clay, or gravel. Estimates are to be made out at the end of each month for all work done and materials delivered, from which ten (10) per centum is to be deducted, and the remainder paid in the manner hereinbefore stated; the percentage so deducted to be retained until the completion of the work, and paid on final estimate.

It is further mutually agreed, that in case the said parties of the second part shall fail to perform the work in such manner as shall give satisfactory assurance of its being completed within the time mentioned, the said company shall have the right to require such additional forces of laborers to be employed thereon as will be sufficient to insure the completion within the time limited, and in case said party of the second part shall refuse or neglect to employ such additional force, it shall be optional with said company to declare this contract abandoned by said parties of the second part, and in case of said abandonment said company shall have the right to let the same to any other parties.

342 It is further understood and agreed, that said Chamberlain and Alden are to aid and assist said company as far as they can in negotiating for and procuring the iron rails for said road, and said company are to use all reasonable efforts and means to procure said iron rails without delay, and have them delivered at Milwaukee in time to lay the track as soon as the grading shall be prepared to receive the same, if practicable; but in case it should be found impracticable to procure said rails as aforesaid, additional time should be given for laying the track and completing the road, and no claim for damages shall be set up in consequence of any such delay by either party; but in case the work should be so delayed, the retained percentage is to be paid to said Chamberlain & Alden, as upon final estimate, they, however, completing the road whenever the iron shall be furnished.

In testimony whereof, the said company has caused these presents to be signed by their president, and the said parties of the second part have hereunto subscribed their hands, the day and year first above written.

The La Crosse and Milwaukee Railroad Company, by

BYRON KILBOURN, *President.*
S. CHAMBERLAIN.
S. H. ALDEN.

Resolved, That the contract entered into between this company, by B. Kilbourn, president, and S. Chamberlain and S. H. Alden, on the 29th day of March, 1856, be, and hereby is, approved, ratified and confirmed, and that a copy of this resolution be indorsed by the secretary on each copy of said contract.

OFFICE OF THE L. C. & M. R. R. Co.,
Milwaukee, April 16, 1856.

I certify the above to be a true copy of a resolution of the board of directors of this company, adopted in regular session at this date.

LEVI BURNELL, *Secretary.*

Received, Milwaukee, March 19, 1856, from the La Crosse and Milwaukee Railroad Company, payment in full for all work done and materials furnished under this contract; the contract for estimating, piling, and paying for filling in Beaver Dam pond still remaining in force.

CHAMBERLAIN & ALDEN.

In consideration of the mutual covenants herein contained, it is greed by and between the La Crosse and Milwaukee Railroad Company and Chamberlain and Alden, that the contract between them for the construction of the road of said company from Beaver Dam to Portage City shall be modified as follows, viz :

Instead of the usual mode of construction and embankment across the Beaver Dam pond, a pile bridge is to be substituted and done as follows : The piles are to be of such length, and driven to such depth, as to make a secure, firm and permanent bridge, and of such thickness as to give the necessary strength and firmness to the structure, when finished, and to be driven in pairs, not exceeding six feet apart, measuring lengthwise of the bridge, and a suitable distance from each other to bear centrally under the track timbers; the track timbers to be of sawed oak, twelve inches square; and the cappings to be of same timber, three inches thick, and not less than ten inches wide, to be secured by trestles, one and one-half inch thick, and proper length, or by iron bolts, at option of contractors.

Said Chamberlain and Alden agree to do said work in a complete and workmanlike manner, for and at the following prices, to be paid in the manner stipulated by the contract, to which this is a modification, viz: For piles fifteen feet long and under, three dollars each, and twenty cents additional for each extra foot in length; for each cap, seventy-five cents; for each foot of track timber lineal, twenty-five cents; for drawing each pile, three dollars; levelling each pair, fifty cents, and contingencies, one dollar to each six feet of length of the bridge.

The above prices includes all materials labor and workmanship incident to the building of the bridge. Said company agree to pay the prices aforesaid for furnishing materials and doing said work, and in addition thereto, to pay the sum (or at the rate) of four thousand dollars per mile, as profits thereon, that being the amount of average estimate profits on the work included in the aforesaid contract, and the length of the line occupied by said bridge is to be deducted from that contract. It is further mutually agreed and understood, that the said Chamberlain and Alden shall use all the diligence to get this work done in season to complete their contract by the 31st day of December next, but should they be unable to do so they shall have an extension of time, and neither party shall have any claim for dam-

ages. The railroad company to furnish motive power and cars, to transport all materials required for this work, over their own road, free of charge, and it shall be done when required by Chamberlain and Alden, or their agents, at any and all times during the day-time, and at such times as not to interfere with the regular running of the trains.

And it is further mutually agreed, that if said company should not exactly comply to the letter with the terms of said contract in relation to the delivery of securities, the following shall be accepted as a compliance, viz., to deliver one hundred thousand dollars in amount of the farm mortgage bonds by the first day of July next, fifty thousand of such securities by the first day of August next, and fifty thousand dollars of the same by the first day of September next.

La Crosse and Milwaukee Railroad Company, by

BYRON KILBOURN, *President.*
CHAMBERLAIN & ALDEN.

Estimate cost of doing the extra work of piling, over the pond near Beaver Dam:

For each pile delivered, 15 feet long and under	$3 00
For driving same	3 00
For capping same	75
For track timbers	1 50
For levelling	25
For contingencies, say	50
	8 00

Error in cost of track timbers, $1 00.

The piles to be driven not over six feet from centre to centre.

Should it be necessary to procure the timber required for the above work between Beaver Dam and Milwaukee, the railroad company to furnish motive power and cars for transporting the same.

NOTE.—The above estimate includes labor and the cost of two pile-drivers of the estimated value of eight thousand dollars.

Exhibit A A. H. L. PALMER.

343 *Exhibit No. B B.—Ballasting contract.*

Memorandum of an agreement made and entered into this twentieth day of November, 1856, by and between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain of the second part, witnesseth, that for and in consideration of the stipulations and payments hereinafter mentioned, the said party of the second part hath and doth hereby agree to ballast that portion of the La Crosse and Milwaukee railroad extending from the city of Beaver Dam to the city of Portage, the work to be done in a good and workmanlike manner, for the sum of forty cents per cubic yard, the material to be measured in the bank at the gravel pits ; the railroad company furnishing motive power and gravel cars sufficient to

do the work to good advantage, (not exceeding one locomotive engine and forty dumper cars, or in their stead twenty-four platform cars, unless a greater number of locomotive engines and dumper or platform cars shall be mutually agreed upon,) free of all costs to the said second party. The track shall be raised at least eighteen inches above sub-grade, and as much more as shall be required, and to be completed in all respects under the direction and subject to the approval of the engineer of the company in charge of the work. The said railroad company are to furnish all grounds required for gravel pits, and track necessary for the same, the work to be prosecuted in such a manner as not to hinder or delay the passage of any of the regular trains of the company; but it is agreed and understood that the said railroad company are to keep the track in good running order during the execution of this contract, and pay the actual cost of any detentions that may be caused by the railroad company's trains being behind time; but that no claim shall be made by the party of the second part for detentions unless the company's trains are more than thirty minutes behind time-table time.

It is also agreed that whenever freight trains are twenty minutes behind time, the gravel train shall be allowed to run out in the same direction as the expected train is running, and dump, always stationing a man with a red flag at least one-fourth of a mile from the gravel pit run from, to warn approaching trains. It is also agreed that the party of the second part will, upon the request of the superintendent of the road, transport to and dump gravel upon any portion of the line of the same embraced in the contract, when gravel is required to repair portions of said road before the same is ballasted, and that the work herein contracted to be done shall be completed on the thirty-first day of July, A. D. 1857.

It is also agreed that the party of the second part may furnish thirty dumper cars at his own cost and charge, to be used on the work herein contracted to be done, and that the party of the first part will, upon the completion of the said work, purchase the said dumper cars, and pay to the said party of the second part the actual cost and charges incurred in the purchase and transportation of the said dumper cars from the point where the same were purchased to the city of Milwaukee, said payment to be made on the first day of August, 1857.

It is also agreed that for all work done under this contract, monthly estimates shall be made by the engineer of the party of the first part, on the first day of each month, for all work done during the preceding month, and that for all work so done prior to the first day of May, 1857, payment shall be made in the company's notes due and payable in the city of New York six months from the time of the rendering of said estimates, with interest at the rate of seven per cent. per annum, and for all work done under this contract subsequently to the first of May, 1857, payments shall be made in cash on monthly estimates, to be made as hereinbefore provided.

In testimony whereof, the said parties have signed this memorandum in the manner following, to wit: the La Crosse and Milwaukee

Railroad Company, by Moses Kneeland, vice-president thereof, (the president being absent,) and the party of the second part for himself.

La Crosse and Milwaukee Railroad Company, by
MOSES KNEELAND, *Vice-President.*
S. CHAMBERLAIN.

Exhibit B B. H. L. PALMER.

344 *Exhibit No. C C.—Contract between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain.*

This agreement, made and entered into this 20th day of January, 1857, between the La Crosse and Milwaukee Railroad Company, of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth, that the said party of the second part, for and in consideration of the several covenants, stipulations and payments, on the part of the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single-track sub-grade railroad, except when ballast can be found on the section known as the "western division" of the La Crosse and Milwaukeee railroad, extending from Portage City to La Crosse, (except the bridge at Kilbourn City,) it being supposed to be about one hundred and ten miles of main line, all the side track to be paid for in addition to the main line and at the same price per mile. The work included in this contract is the grading, bridging, culverts, ties, chairs, spikes, and laying the track, which shall be laid by centre stakes and without grades. The work to be done in a good, substantial and workmanlike manner, for the sum of twelve thousand dollars per mile of main line, and the same sum per mile of side track.

Grading.—The road-bed shall be graded fourteen feet wide in embankments at sub grade, and eighteen feet wide in excavation. The excavations and embankments are to have such slopes as the engineer may direct, but not to exceed one foot and a half horizontal to one foot vertical; and no waste shall be deposited within three feet of the top of the slope of excavations, nor any borrowing ditches be dug within five feet of the base of embankments. The said railroad company are to furnish grounds convenient to waste earth, when from excavations, and to borrow earth from, for embankments for the road-bed.

Masonry.—All abutments for bridges and culverts shall be constructed of timber, unless suitable stone can be obtained within two miles of the point where the structures are to be put in. Should stone be found within the above limits the bridge, abutments, and piers, if any, shall be rough masonry, with good beds and joists. No bulking shall be used of less thickness than four inches, unless required for levelling up. Common lime mortar shall be used in all bridge masonry. Culverts shall be constructed of rough stone and without mortar.

Cross-ties.—The cross-ties are to be hewed or sawed, and to be of red, white, burr, and black oak, cedar, spruce, tamarack, gray or

Norway pine, black walnut or ash, and are to be six inches thick, eight feet long, and are to have a bearing surface of not less that seven inches. Ties shall be laid in track two feet and three inches from centre to centre, and twenty-three hundred and forty-four ties shall be laid in each mile of track.

Track laying.—The track shall be laid in the usual way of laying sub-grade track with a T rail and a common wrought-iron chair, the spike to be five inches long and a half an inch square. The said party of the first part agree to furnish the said party of the second part with locomotive power and a sufficient number of platform or suitable cars for the transportation of iron, chairs, spike, ties, timber, and other materials on said western division required during the execution of this contract, free of all cost or charge to said second party; and the said party of the first part also agrees that the contractors shall be passed free over the road during the construction, and any of his agents necessary for their business shall be furnished with a pass from the president or superintendent, and laborers, with their families and baggage, once out to work, on passes furnished by the contractor or his agent, on any freight or construction train.

Extra work.—It is hereby mutually agreed and stipulated between the parties to this agreement, that all grubbing and clearing, all excavations of rock, quicksand, indurated clay, or cemented gravel, all foundations for masonry, all piling and hauling of excavations or embankments over five hundred feet, shall be considered extra work, and shall be paid for at the following rates, to wit: Grubbing and clearing, three hundred dollars per mile the entire length of main line; loose rock excavations, seventy-five cents per cubic yard; dry solid rock, one dollar per cubic yard; rock excavation in dividing ridge, one dollar and twenty-five cents per cubic yard; quicksand excavations, one dollar per cubic yard; hard-pan, indurated clay, or cemented gravel, seventy-five cents per cubic yard; for all hauling of excavation or embankments over five hundred feet, one cent extra per cubic yard for each one hundred feet: provided, that if the aggregate of earth-works shall fall short of the maximum of 20,000 cubic yards per mile, then 25 cents per yard is to be deducted from the above-mentioned price for rock, hard-pan, indurated clay, or gravel, subdivision and limits of quantities.

It is further mutually agreed and understood that the work embraced in this contract is to be divided into three subdivisions of nearly equal distances, and should the quantities of excavations and embankments, or any one or more of the subdivisions, exceed twenty thousand yards per mile, such excess shall be paid for as extra work, at the rate of forty cents per cubic yard; and it is agreed that the quantities shall be as much below the above limits as practicable, consistent with a proper regard for the location of the work, and due care shall be taken in the location of the line to produce the most favorable result in this respect. It is also agreed that all excavations from the cuts shall be hauled into embankments when it can be done with a reasonable haul, and shall be computed as excavation or embankment only.

The railroad company agree to furnish the iron rails of the T pattern, notched, ready for laying, and deliver at Portage City a sufficient amount to lay the track to Kilbourn City, and at the latter point the balance sufficient to lay the track to La Crosse, and pile the same in a convenient place to load on the cars, and keep a full supply always on hand, and to forward to some points all chairs and
345 spikes required to be used in laying said iron in track free of charge for transportation, and to furnish motive power and cars to transport to Portage City all ties or materials for construction now owned by the party of the second part, and on the line of the eastern division of the road of the party of the first part.

It is also agreed by and between the parties, that the said party of the first part agrees to do all engineering, and to have the work at all times ready for said party of the second part, so as not to hinder or delay the work, and to have the work divided off into sections of one mile each, being each regular surveyed mile on the line.

The said first party also agrees to furnish all rights of way, and obtain grounds for wasting materials on from excavations, and borrowing from for embankments, so as not to delay or hinder the progress of the work.

And it is further mutually agreed between the parties to this contract, that if, in course of the prosecution of this contract, or after the completion of the work to be done, any matter of difference or disagreement shall at any time arise, either as to the construction of this agreement or as to the manner of doing the work herein contracted to be done, all such matters of difference shall be at once submitted to three disinterested persons to act in the premises; and should the parties not be able to agree on the third person, the two first selected shall select a third. The three so chosen shall hear the parties, and decide the matter submitted to them, and the decision of a majority of them shall be final and conclusive, and their decision as aforesaid shall be irrevocable. It is further agreed that any extra work required to be done for which no price is specified shall be paid for at a fair price.

The work shall be commenced by the first day of February next, and be completed to Kilbourn City on the first day of October next, and to La Crosse by the thirty-first day of October, eighteen hundred and fifty eight. The said first party agree that the bridge at Kilbourn City shall be completed and ready for the track by the first day of October next.

Estimates and payments.—Estimates shall be made on the first day of each month, by the engineer in charge of said work, of the amount of work done and materials furnished by said party of the second part during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor; and copies of all such estimates shall be furnished to the said party of the second part; and the said party of the first part covenants and agrees to pay to said party of the second part, on the fifth day of each month, ninety per

cent. of the amount of such estimate so to be made on the first day of each month. Such payments shall be ninety per cent. of such proportional sum of the whole amount to be paid under this contract, as such work and materials so estimated bear to the whole work and materials embraced in this contract. All estimates shall be paid by sight drafts, payable in New York. The retained percentage shall be paid on the completion of each division of 34 miles.

It is also mutually agreed and understood by and between the parties hereto, that at any time during the progress of the said work the party of the first part shall have the right to suspend the performance thereof during such time as they may think expedient, and again require the same to be resumed by the party of the second part without being held liable for damages for any such suspension: provided, that at least thirty days' notice shall be given to said party of the second part of any such suspension being required, and that a reasonable extension of time shall be given to the said party of the second part for the completion of the contract for any detention caused by such suspension.

In testimony whereof, the said company has caused these presents to be signed by their president, and the said party of the second part has hereunto subscribed his hand the day and year first above written.

La Crosse and Milwaukee Railroad Company, by

BYRON KILBOURN, *President.*

S. CHAMBERLAIN.

Exhibit C C. H. L. PALMER.

347 *Exhibit D D.*

This memorandum of agreement entered into between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, party of the second part, witnesseth: That the party of the first part has agreed, and by these presents does agree, to and with the party of the second part, that in case the party of the second part fails to complete the railroad of the party of the first part to Kilbourn City by the first day of October, 1857, and to the city of La Crosse by the thirty-first day of October, 1858, as stipulated in an agreement made and entered into this day, that no claim for damage shall be made for the non-performance of that portion of the said contract requiring the completion of the said railroad to the points at their respective dates above named, unless the said railroad is not completed to Kilbourn City on the first day of November, A. D. 1857, and to the city of La Crosse on the thirty-first day of December, A. D. 1858. And it is further agreed by and between the parties hereto, that in case the party of the first part fails to complete to the bridge over the Wisconsin river, at Kilbourn City, by the first day of October next, as stipulated in the agreement hereinbefore mentioned, that no claim for damage shall be made by the party of the second part for the non-performance of that portion of the said contract requiring the completion of the said bridge on the first day

of October, unless the said bridge is not completed by the first day of November, 1858.

In witness whereof, the said company have caused these presents to be signed by their president, and the said party of the second part has hereunto subscribed his hand this twentieth day of January, A. D. 1857.

La Crosse and Milwaukee Railroad Company, by
BYRON KILBOURN, *President.*
S. CHAMBERLAIN.

Exhibit D D. H. L. PALMER.

348 *Exhibit No. E E.—Contract—La Crosse and Milwaukee Railroad Company with Selah Chamberlain. Copy from directors' minutes.*

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit :

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, witnesseth : That the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties for the construction of the western division of the La Crosse and Milwaukee railroad from Portage City to La Crosse, excepting the bridge across the Wisconsin river, at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, viz :

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last-named points as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the twentieth day of December, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite

for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension and by loss, as teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed, that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part on the 30th day of September, 1857, under and by virtue of the said contracts of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, (200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part; and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties, that on the 1st day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties, that whatever sums

shall hereafter become due to said party of the second part for any work done on the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by
[L. S.] BYRON KILBOURN, *President.*
JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN. [L. S.]

LA CROSSE AND MILWAUKEE R. R. Co.,
Secretary's Office, Milwaukee, April 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee on the 26th day of September, 1857, and that the preceding contract is a true and correct copy of and the whole of the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY, *Secretary.*

Exhibit E E. H. L. PALMER.

349 *Exhibit No. F F.—Contract to build the road from New Lisbon to Tomah.*

This agreement, made and entered into this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth, that the said party of the second part, for and in consideration of the several covenants, stipulations and payments on the part of the said party of the first part, hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct for said party of the first part a single-track railroad upon and along the line of the railroad of the said party of the first part, as at present located, extending from New Lisbon, on the line of said railroad, to the junction, so called, at the village of Tomah, the western terminus of that portion of said road hereby agreed to be constructed to be fixed and determined by the president of the said La Crosse and Milwaukee Railroad Company, and to be on the farm of Solomon D. Hollister, and within eighty rods of the junction of the lines of the said road as at present located, and to fully complete the same on or before the first day of October, in the year one thousand eight hundred and fifty-eight. The work included in this contract is all the work required to fully construct that portion of the road of the said

company hereinbefore described, according to the specifications and requirements of a contract entered into by and between the parties aforesaid, bearing date the twentieth day of January, A. D. 1857, for the construction of the western division of the road of said company, viz., grading, bridging, culverts, ties, chairs, spikes, and laying track, and also including grubbing and clearing, and ballasting, hauling of materials and iron rails, and all other work and materials necessary to fully complete and finish the same, for the sum of three hundred and fifty thousand dollars, payable in the bonds of the said company, secured by a mortgage or deed of trust, heretofore executed to Greene C. Bronson, Shephard Knapp, and James T. Soutter, as trustees, upon the western division of the said road, and the title of the said company, present and prospective, to the lands granted by Congress to aid in the construction of said road, and commonly called the land grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish and provide, and transport at his own cost and expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by said party of the first part, and delivered to the said Chamberlain at the depot of the La Crosse and Milwaukee Railroad Company, in the city of Milwaukee, free of duties.

It is also agreed by and between the parties aforesaid, that the said party of the first part shall do all the engineering, and shall have the work laid out and divided off into sections, and shall procure and furnish and provide all right of way and wasting grounds, and borrowing pits, as required and provided in said contract, dated the 20th day of January, A. D. 1857.

And the said party of the first part covenants and agrees, to and with the party of the second part, that the said party of the first part will, on or before the first day of January next, deposit with Greene C. Bronson, esq., of the city of New York, trustee, three hundred and fifty of said bonds of the said company hereinbefore described, amounting to the par value thereof to three hundred and fifty thousand dollars, to be held by him for said company, and as their agent, until paid by said Chamberlain, and to be paid over by the said Greene C. Bronson, to the said party of the second part, as heretofore provided.

Estimates and payments.—Estimates shall be made on the first day of each month, commencing on the first day of January next, by the engineer in charge of said work, of the amount of work done and materials furnished by the said party of the second part during the preceding month, and of the proportion which such work and material bears to the whole work and materials embraced in this contract, and also separate estimates of the amount of work done and materials furnished by each sub-contractor, and copies of all such estimates shall be furnished to the said party of the second part, and copies of all such estimates (other than the separate estimates of work done by sub-contractors) shall also be furnished to the said Greene C. Bronson; and the said party of the first part hereby covenants and agrees that the said Greene C. Bronson shall pay to the said party of the second

part each month, on the presentation and delivery to him of a copy of such monthly estimate, the amount thereof in and out of the said bonds so to be deposited with him as aforesaid, at the par value thereof, so that the said party of the second part shall be paid each month such proportional sum of the whole amount to be paid under this contract as such work and materials done, furnished and provided in the preceding month, and so estimated, shall bear to the whole work and materials embraced in this contract. It is further stipulated that this contract also includes the construction of a side track or turn-out at the Red Mills, and also at Tomah, and the said Chamberlain is not to be charged by said company for the transportation of iron or materials over said road.

And it is further agreed by and between the parties to this instrument that nothing in this contract contained shall be construed as either affirming or disaffirming any previous contract, judgment or settlement, which said Chamberlain claims to have with or against the said company, or as affecting the legal construction of any such contract; the true object of this contract being to secure the construction of said road between the points herein named, independently of any question at dispute, which has arisen or may arise between the parties hereto, or other matters; this contract being to the extent of the construction of said road between said points, and no further a substitute for and in lieu of any former contract which said Chamberlain has or claims with said company.

In testimony whereof, said company has caused these presents to be signed by their president, and the said party of the second part has subscribed the same the day and year first above written.

La Crosse and Milwaukee Railroad Company, by

[L. S.] STEPHEN CLARK, *President.*

S. CHAMBERLAIN. [L. S.]

Exhibit F F.

H. L. PALMER.

350 *Exhibit No. G G.—Contract to build the road from Tomah to La Crosse.*

This agreement, made and entered into this first day of January, A. D. 1858, by and between the La Crosse and Milwaukee Railroad Company, party of the first part, and Selah Chamberlain, of Cleveland, Ohio, party of the second part, witnesseth, that the said party of the second part, for and in consideration of the several covenants and stipulations on the part of the said party of the first part hereinafter mentioned and set forth, to be made and performed by the said party of the first part, hereby contracts and agrees to construct, for said party of the first part, a single-track railroad, including all necessary side tracks, upon and along the line of said railroad of the said party of the first part, as at present located, extending from the junction at or near the village of Tomah to the Mississippi river, at the city of La Crosse, the western terminus of said road. The party of the first part reserving the right to change or vary the line of loca-

tion of said road, by paying the said Chamberlain the extra cost, if any, caused by such changes in the aggregate, and to fully complete the same on or before the first day of January, 1859.

The work included in this contract is all the work required to fully construct that portion of road of said company hereinbefore described, according to the specifications and requirements of a contract entered into by and between the said parties aforesaid, bearing date the 20th day of January, 1857, except the tunnel, which is to be excavated to a sufficient dimension for a single-track railroad for the construction of the western division of the road of said company, viz., grading, bridging, ties, culverts, cattle guards, chairs, spikes, and laying track, and also including grubbing and clearing, and hauling of materials, and all other work required to complete and finish the same to sub-grade ; the track to be laid to set grade stakes. The said party of the second part also further agrees to pay the duties on the iron required to lay the track from the village of Tomah to the city of La Crosse, including all necessary turn-outs and side tracks, for the sum of one million five hundred thousand dollars, payable in the bonds of said company, secured by a mortgage or deed of trust heretofore executed to Greene C. Bronson, Shepard Knapp, and James T. Soutter, as trustees, upon the western division of said road, and the title of said company, present and prospective, to the lands granted by Congress to aid in the construction of such roads, and commonly called the land-grant bonds of said company, at the par value thereof, as hereinafter provided. And the said Chamberlain agrees to furnish and provide, and transport at his own expense, all the materials required in and for the work aforesaid, except the iron rails, which are to be furnished and provided by the said party of the first part, and delivered to the said Chamberlain at the depot of the said La Crosse and Milwaukee railroad in the city of Milwaukee, subject to the duties thereon ; and no charge to the said Chamberlain shall be made for transporting the iron rails or other materials over the line of said railroad by said party of the first part.

It is also agreed by and between the parties aforesaid, that the said party of the first part shall do all the engineering, and shall have the work laid out and divided into sections, and shall procure, and furnish, and provide all right of way, and wasting grounds, and borrowing pits, as required and provided for in said contract, dated the 20th day of January, 1857.

And the said party of the first part covenants and agrees to and with the said party of the second part, that the said party of the first part will, on or before the first day of February next, pay and deliver to the said party of the second part the full sum of one million five hundred thousand dollars in the bonds of said company, of the description hereinbefore mentioned, including therewith the same amount of privilege stock, such as the said company have heretofore issued, with the same class of bonds. Estimates shall be made on the first of each and every month, commencing on the first day of February next, by the engineer in charge of said work, of the amount

of work done and materials furnished by the said party of the second part, during the preceding month, and of the proportion which such work and materials bear to the whole work and materials embraced in the contract; and also separate estimates of the amount of work done and materials furnished by each sub-contractor; and copies of all such estimates shall be furnished to the said party of the second part. And the party of the second part shall be credited on the books of said company for such proportional sum of the whole amount to be paid under this contract, as the work done and materials furnished, embraced in such monthly estimates, bears to the whole work and materials included in this contract. It is also further agreed, that the said party of the first part shall have the right to change the location of the line or direction of said road into the city of La Crosse from the north La Crosse route, by paying to said Chamberlain the increased cost of construction and materials to be furnished by reason of such change of route or line of said road.

The party of the second part also covenants and agrees to return to the party of the first part one hundred and twenty-nine land-grant bonds of said company, delivered to said Chamberlain in March last, with the coupons attached, due on and after the first day of August, 1858.

It is understood and agreed that all claims to damages by either party against the other, arising from any breach of the contract of 20th of January, 1857, happening prior to this date, are by this contract mutually released, settled, and extinguished, except such as have already been adjusted between the parties.

In witness whereof, the said company has caused these presents to be signed by its president; and the said party of the second part has subscribed the same, the day and year first above written.

La Crosse and Milwaukee Railroad Company, by
STEPHEN CLARK, *President.*
S. CHAMBERLAIN.

Exhibit G G. H. L. PALMER.

351 *Exhibit H H.—Testified by E. H. Goodrich.—H. L. Palmer.*

SPECIAL MEETING, *June* 29, 1854.

Resolved, That the president of the company be, and he is hereby, authorized and directed to prepare ready for sale, bonds of this company to an amount in the aggregate of nine hundred and fifty thousand dollars, of which five hundred shall be for one thousand dollars each, and nine hundred shall be for five hundred dollars each, all properly numbered, and bearing interest at the rate of eight per cent. per annum, payable semi-annually at the Broadway Bank, in the city of New York, the principal payable on the first day of November, in the year one thousand eight hundred and seventy-four, at the same place, all to bear date the first day of July, one thousand eight hundred and fifty-four, said bonds to be convertible into the stock of this company at par, at the will of the holder at any time within ten years from their date, upon the surrender of the same, with the unpaid coupons or interest warrants, which bonds shall be executed by the

president and secretary, under the seal of this company, and to which shall be attached coupons or interest warrants for the semi-annual interest, signed by the secretary, payable on the first day of each November and each May ensuing their date; and for the purpose of securing the payment of the principal and interest of the said bonds, the president shall execute and deliver in trust to Francis A. Palmer, of the city of New York, (with a provision making Isaac Seymour, of said city, his successor in case of death, incapacity or resignation of the said Palmer,) as trustee, a mortgage upon all of the road for its eastern termination in the city of Milwaukee to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed or to be constructed, together with all and singular railroad land procured or occupied, or so to be, for right of way within the limits aforesaid, together with the bridges, fences, privileges, rights and real estate, owned by said company, for the purposes of said road, or which may be hereafter acquired or owned by them within the limits aforesaid, and tolls, incomes, issues, and profits, to be had from the same, and all lands used for and occupied by depots or stations, with all buildings standing thereon, within the limits aforesaid, or which shall be procured therefor, together with all locomotives, engines, and tenders, passenger cars, freight cars, shops, tools, and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad now constructed and to be constructed within the limits aforesaid, including all its rights, credits, and franchises thereunto appertaining, and may contain such other words of grant and conveyance on the part of this company, and also such covenants, claims, provisions, and conditions, as the said president shall deem proper and expedient.

A true copy of the recorded minutes.

E. A. PATTERSON.

352 *By-laws of the La Crosse and Milwaukee R. R. Company, revised and adopted October* 15, 1856.

Fiscal year and quarters.

SECTION 1. The fiscal and business year of this company shall be the same as the civil year terminating on the last day of December, and shall be divided into four business periods or quarters, each terminating on the last day of March, June, September, and December, respectively.

Annual meeting of stockholders in April, at office in Milwaukee.

SEC. 2. The annual meeting of the stockholders of this company shall be held on the Thursday next succeeding the third Wednesday of April in each year, at the office of the company in Milwaukee, or at such other place as shall be appointed by a resolution of the board of directors, at which the election of directors shall be held, commencing at ten o'clock a. m., and closing at four o'clock p. m., of the same day; but in case the annual meeting in any year should not, for any cause, be held on said day, some other time shall be appointed by resolution of the board of directors, at which a special meeting of the stockholders shall be held for the purpose aforesaid.

Of elections.

SEC. 3. All elections held by this company shall be under the direction of the board of directors, who shall be inspectors thereof, and shall be conducted in the following manner: The president, vice president or president pro tem. shall preside at the meetings of the stockholders. If the secretary be absent, a secretary pro tem. shall be appointed by the directors; they shall also appoint two clerks to assist the secretary in keeping the poll-books. The votes shall be delivered to the president, and by him handed to the secretary, who shall enter the name of the stockholder in a line opposite to the proper number entered in the margin of the poll-book from "1" consecutively, until all the votes shall be received; and the number in the margin against which the name of any vote is entered shall be indorsed on the ballot by him presented, to be written in a third column. Having made such entry and indorsed such number, the secretary shall then hand such ballot to one of his assistants: to the first assistant number "one;" to the second assistant number "two;" to the first assistant number "three;" to
353 the second assistant number "four;" and so on to the end; and each assistant shall write the number indorsed by the secretary in the first column of his book; the number of votes contained on the ballot, in the second column; and the number given to each person voted for, in the other columns, which shall be ruled for that purpose, at the head of each of which shall be entered the name of the person voted for, and such entries shall be made correctly as the votes are received, and the aggregate number of votes given to each person be footed at each entry, so that the state of the canvass may be at all times during its continuance; and when the ballots have been so entered and accounted, they shall be deposited in a box for safe-keeping for the purpose of subsequent comparison.

Who to preside.

Secretary.

Mode of receiving, entering, and counting votes.

Of special meetings of the stockholders.

SEC. 4. No business shall be transacted at any special meeting of the stockholders, unless a majority in value of the stockholders shall attend in person or by proxy. At least thirty days' notice shall be given of the time when, and place where, the annual or any special meeting of the stockholders will be held, such notice to be published in three newspapers to be designated by the directors, and signed by the secretary of the company, or by such stockholders as may call any special meeting.

Stockholders may vote by proxy.

SEC. 5. At all meetings of the stockholders, absent members may vote by proxy, duly authorized in writing, and in order that all may know who are stockholders, it shall be the duty of the secretary, previous to every meeting thereof, to make an alphabetical list of all the stockholders, with the number of votes each is entitled to cast set opposite his or her name, and have the same present

Secretary to make alphabetical list of stockholders.

at such meeting for the use of the officers and members thereof.

Quarterly meetings of directors, when held.

SEC. 6. The regular quarterly meetings of the board of directors shall be held on the third Wednesday of January, April, July, and October, at the office of the company in Milwaukee, at two o'clock in the afternoon, unless otherwise specially directed by the board, and special meetings may be called by the president or by any three members of the board, to be convened at such time and place as may be appointed, but at such special meeting it shall require a majority of the whole board to adopt any measure.

Special meetings, how called.

Office of company to be kept in Milwaukee.

SEC. 7. The office of the company, and of the president, secretary, and treasurer, with the books and papers thereto belonging, shall be kept in the city of Milwaukee.

Railroad divided into five divisions.

SEC. 8. The railroads of this company, for the 354 purpose of construction, are hereby divided into the following divisions, viz: the eastern, western, Watertown, northwestern, and Portage divisions.

Eastern.

1st. The eastern division shall embrace the road from Milwaukee, by way of Schleisingerville, to Portage City.

Western.

2d. The western division shall embrace the road from Portage City to La Crosse.

Watertown.

3d. The Watertown division shall embrace the road from Milwaukee, by way of Watertown, to Portage City, or to the intersection of the eastern division.

Northwestern.

4th. The northwestern division shall embrace the road from Portage City to the point of intersection of the road from the St. Croix river, or lake, to the west end of Lake Superior.

Portage.

5th. The Portage division shall embrace the road from Madison to Portage City.

Stock of each division separate.

The stock of each division shall be separate and distinct from *from* every other division, until such division shall be completed, so as to be operated throughout, and until

After completed to become general stock.

the first dividend day after such division shall be so completed, when it shall no longer be kept separate, but become a part of the general stock of the company.

Eastern division to be general stock.

The stock of the eastern division shall be general stock of the company from and after the last day of June, 1856.

Separate books and accounts for each division.

Separate books shall be kept for each division, in which shall be kept separate accounts of all receipts and expenditures on account of the construction and operating of such division, until the stock of such division becomes a part of the general stock, in the same manner as though it were a separate corporation.

Duties of president.

SEC. 9. The president of the company shall have a general supervision and direction, subject to the order of the board of directors, of the business and affairs of the company, and shall preside at all meetings of the board of

directors and of the stockholders when present in person. A vice-president shall be elected annually, whose term of service shall be the same as that of the president, who shall exercise all the powers and duties of the president whenever the president shall be absent or unable from any cause to discharge his duties in person. In the absence of the president and vice-president at any meeting of the directors, a president pro tempore may be appointed by the directors, who shall discharge the duties of president at any such meeting of the directors. It shall further be the duty of the president, unless otherwise specially ordered, to sign all certificates of stock, orders on the treasurer for payments by the company, deeds, bonds, contracts, writings obligatory, and papers of whatever kind to which the company is a party, under such rules and regulations as may be established by the by-laws, or from time to time adopted by resolution or otherwise of the board of directors.

Vice-president.

President pro tem.

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President to sign papers.

Sec. 10. There shall be a secretary appointed annually by the board of directors, whose duty it shall be to attend the meetings of the board, to keep a fair and accurate record of all their proceedings, and of the stockholders when met for the transaction of business, make out a quarterly statement and balance sheet up to and including the last day of each quarter, and also an annual statement and balance sheet up to and including the last day of December in each year, showing the financial condition of the company at each of said periods; keep an accurate account with each contractor, and all persons having dealings with the company, and an account of the whole property of the company, in what it consists, where situated, and in whose hands intrusted, and shall also keep an accurate account with each of the stockholders relative to the amount of stock held, the amount paid thereon, the amount of dividends declared and paid; also, to transfer any shares of stock upon application of the owner thereof, made in writing, either by assignment on the stock certificate and surrender thereof, or in the books of transfer, and generally to keep a full account of the whole amount of the receipts and revenues of the company, of whatever kind, or from whatever source, and of the whole amount of disbursements and expenditures of the company for whatever purpose: Provided, however, That the secretary shall in no case, without direction of the board of directors, transfer any stock on the books of the company when the owner thereof is indebted to the company, either for instalments of stock, or by note, contract, or account, or by reason of any liability of such stockholder to the company, either in his own behalf or on behalf or on account of other parties, and which indebtedness or

Secretary.

To keep records.

Quarterly statement and balance sheets.

Accounts.

Transfer stock.

Stock not to be transferred if holder is indebted to company.

liability in any manner appears on the books and papers in the hands of the secretary, or that may otherwise be brought to his knowledge, whereby he may be aware of the existence of such indebtedness. It shall be the duty of the secretary to countersign all certificates of stock and orders for payments drawn on the treasurer, and such other papers, executed on behalf of the company, as may be required by the board of directors.

To countersign papers.

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Treasurer to take charge of and disburse moneys, &c.

SEC. 11. There shall be appointed annually by the board of directors a treasurer, whose duty it shall be to take charge of and safely keep, collect, and disburse, under the regulations of the board, all moneys, goods, chattels, and evidences of debt of every kind belonging to the company coming into his hands, or appropriately belonging to his department. He shall deliver to the secretary daily an abstract of all receipts given by him on the preceding day; he shall take, keep, and carefully preserve all vouchers in support of all disbursements which he may make by order of the board. He shall keep no accounts with individuals having business with the company; all moneys received by him shall at once be passed to the credit of the company on his books, and the same account charged with all warrants drawn on him when paid, and shall also render a quarterly and annual account and statement at the end of each quarter and year of all receipts and disbursements by him made during the preceding quarter or year, and lay the same before the board at the next regular meeting after the expiration of said quarter or year. He shall give a bond, conditioned for the faithful discharge of the duties of his office, with good and sufficient securities, to be approved by the board, in such penal sums as the board may require, and such bond shall be increased and additional security given at any time when the board may see proper to require, provided that no director shall be received as surety on said bond.

Vouchers.

Accounts.

Quarterly and annual statement.

Bond.

Directors not to be surety.

Chief engineer.

SEC. 12. A chief engineer, when appointed, shall hold his office during the pleasure of the board. It shall be his duty, under the direction of the board, to take charge of the surveys, location, and construction of the road, and direct the operations of all branches of the service; superintend the construction of all work under contract, and, by himself or assistants, direct and control all contractors in the performance of their work, pass upon and accept or reject all work performed, and give certificates of estimate for the payments due for all work performed agreeably to contract, and report annually, or oftener if required, the state and condition of the road, and submit such estimates of future operations as the business of the

Duties.

company and progress of the work may render proper and necessary.

357 SEC. 13. There shall be appointed a superintendent, who shall hold his office during the pleasure of the board, and who shall have the care and management of the operation of the road, and of all matters and things incident thereto. He shall have power to appoint and remove all persons requisite in his department; he shall keep an account of all receipts and disbursements in his department, and from time to time make report to the board of directors and the executive committee.

Superintendent.

Powers and duties.

SEC. 14. There shall be appointed an attorney of the company, who shall hold his office during the pleasure of the board, and who shall have the care and management of all suits, causes, actions, and litigated matters of every description in which the company shall be a party or be interested; and he may employ such counsel as he may think proper in the prosecution or defence of any suit pending or contemplated in any court. He shall also perform such other professional duties as shall be required by the board of directors and the executive committee.

Attorney.

Term of service.

Duties.

May employ counsel.

SEC. 15. A department is hereby established, which shall be called the land department, and an officer shall be appointed, who shall be called commissioner of the land department. He shall have a general supervision, management, and control, subject to the control of the board of directors, of all lands granted to the company by the State or United States, and all other real estate of the company, and of its right of way, and may employ such agents and assistants as he shall think necessary to aid him in the discharge of his duties. He shall hold his office during the pleasure of the board until such commissioner shall be appointed by the board of directors; the attorney shall be the acting commissioner and discharge his duties.

Land department.

Commissioner of land department.

Employ assistants.

Att'y to be acting commissioner.

SEC. 16. All subordinate officers and agents of the company shall be appointed or employed by the board of directors, president, superintendent, or chief engineer in the several divisions of the service, as may be provided by resolution of the board from time to time; and the duties and compensation of all such officers and agents shall be regulated by action of the board.

Subordinate officers, how appointed.

SEC. 17. The board of directors shall have power at any time, by a vote of a majority of the entire board, to remove any officer of its own appointment, or that may have been appointed or employed by any officer of the

358 company, and the president, superintendent, chief engineer, or commissioner may remove at pleasure any subordinate officer or agent in their respective departments, assigning reasons, if required, to the board of directors at their next meeting, as the cause of such removal.

Officers, how removed by board.

How removed by president, superintendent, and engineer.

Executive committee appointed annually.

SEC. 18. A committee of five directors shall be appointed annually by the board of directors at their first meeting after the annual election of directors, to be called the executive committee. The president and vice-president shall be ex-officio members of the executive committee. The executive committee shall hold their offices during the term for which they were elected directors, or until removed by the board of directors. The executive committee shall possess all the power and authority when the board of directors is not in session, that the board of directors do or can possess when in session, by virtue of the act of incorporation or any other act affecting the powers and authority of the corporation or its directors, or of these by-laws. They shall keep a record of all their transactions, which shall be read at each quarterly meeting of board of directors; and the board of directors, at such quarterly meetings, shall have the same power to disprove, rescind, and annul any act or transaction of the executive committee subsequent to the next previous quarterly meeting of the board, as they would have to disapprove, rescind, or annul any previous act or transaction of the board of directors; and all the acts and transactions of the executive committee not disapproved, rescinded, or annulled, shall be deemed held and taken to be approved and confirmed by the board of directors.

Ex. com. to possess powers of board when board not in session.

Keep record.

Directors may disapprove.

When not disapproved to be deemed approved.

Of stock subscription.

SEC. 19. The directors shall from time to time prescribe the manner, places, and times of taking up subscriptions to the capital stock, but no subscription of stock shall be binding on the company until the same shall have been approved by a resolution of the board.

Of instalments on stock.

SEC. 20. Instalments on the stock subscribed shall be called in from time to time, in such manner as shall be required by resolution of the board of directors, in accordance with such stipulations as may have been made at the time of subscribing, and agreeably to the act of incorporation; and if any instalment, so-called, on any share or shares of stock, shall remain unpaid for thirty days after the time when the same shall become due and payable, agreeably to such call and regulation of the board, the board may, at their option, proceed to collect the

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amount due on such share or shares, or they may forfeit to the use of the company any such share or shares. In case the directors shall determine to forfeit any such share or shares, they shall publish, in some newspaper published in Milwaukee, a general notice to stockholders that all shares of stock on which any instalment has remained due and unpaid for thirty days prior to the date of such notice, will be liable to forfeiture at any time after a certain day to be designated in such notice, not less than thirty days from the date of it; but such notice need not specify

In case of non-payment may collect or forfeit stock.

Of publication in case of forfeiture.

the name of any delinquent stockholder. At any time after the time designated in such notice the directors may, by resolution, declare the share or shares of any stockholders, upon which any instalment shall then remain due and unpaid, to be absolutely forfeited, together with all previous payments thereon. And thereupon a certificate of stock shall be issued in the usual form to the treasurer of the company, or such other trustee as the directors may appoint for the stock so forfeited, which the said treasurer or other trustee shall hold in trust for the use of the company, and shall transfer in such manner as the directors shall from time to time determine. And a like certificate shall be issued for all shares of stock heretofore forfeited.

Forfeited stock to be transferred to treasurer.

SEC. 21. The following form of certificate and transfer shall be used by the officers of the company for all fully paid stock which has become a part of the general stock of the company, viz:

Form of certificate.

This is to certify that , of , in the county of and State of , entitled to shares of one hundred dollars each of the capital stock of the La Crosse and Milwaukee Railroad Company, including dividends from the day of , 18 . This stock is transferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Milwaukee, , 18 .

——— ———, *President.*

——— ———, *Secretary.*

(Form of transfer.)

For value received hereby transfer to , of , shares of stock in the La Crosse and Milwaukee Railroad Company, embraced in the within certificate, including all unpaid dividends thereon.

Dated this day of , 18 .

The following form of certificate and transfer 360 shall be used by the officers of the company for all fully paid stock which has not become a part of the 360 general stock of the company:

Form of certificate of full paid division stock.

This is to certify that , of , in the county of and State of , entitled to shares of one hundred dollars each of the capital stock of the La Crosse and Milwaukee Railroad Company, in the division, which stock is entitled to interest at the rate of ten per centum per annum from the day of , 18 , payable in stock in said division, on the first day of July in each year, until said division is completed and operated throughout. This stock is trans-

ferable only on the books of the company, in person or by attorney, on surrender of this certificate.

Milwaukee, , 18 .

————————, *President.*

————————, *Secretary.*

(Form of transfer.)

For value received hereby transfer to , of , shares of stock in the La Crosse and Milwaukee Railroad Company, in the division embraced in the within certificate, including all unpaid interest thereon.

Dated this day of , 18 .

Form of certificate for stock partially paid.

And the stubs from which the certificates are cut shall show the name and residence in full of the stockholders, number of shares and date of issue, whether the stock is general stock or division stock. And for all shares of stock upon which partial payments only have been made, a certificate in the following form shall be given by the secretary:

SECRETARY'S OFFICE, , 185 .

This will certify that the foregoing payments have been made upon the shares of capital stock standing in the name of on the books of this company in the division.

Form of certificate for mortgaged stock.

For all stock paid by mortgage upon real estate a certificate in the following form shall be issued:

This is to certify , of , is entitled to shares of one hundred dollars each in the capital stock of the La Crosse and Milwaukee Railroad Company, which have been fully paid by a mortgage upon real estate. This stock is subject to a reservation of eight per cent. per annum in favor of the company, and of such amount of the dividends as may be declared in favor of the holder hereof, and also of the amount of all taxes
361 paid by this company upon said mortgaged lands in consequence of the neglect of the mortgagor, or his assigns, to pay such taxes, until said dividends shall be sufficient for the final payment of the principal sum of said mortgage; after which time, said dividends shall be paid currently as on cash paid stock. Interest will be allowed on all retained dividends over and above eight per cent. per annum, and any taxes so paid as aforesaid. It is therefore not assignable except it be subject to the above reservation, and no transfer of such stock shall be made on the books of the company until the note or bond secured by such mortgage shall have been paid.

This stock draws the holder thereof ten per centum per annum (less the amount of the above reservations)

until a dividend shall be declared from the earnings of the road.

Milwaukee, , 185 .

——— ———, *President.*

——— ———, *Secretary.*

SEC. 22. On the first day of July in each year, until a dividend shall be declared, each stockholder shall be credited with interest at the rate of ten per centum per annum on all payments made by him or standing to his credit on account of stock, from the date of such payment or credit. And in case any stock standing in the name of such stockholder shall not be fully paid, the amount of such interest shall be placed to his credit, in part payment of such stock. In other cases, certificates for such interest, payable in stock, shall be issued, which shall be transferable by delivery. All interest on stock paid by mortgage on real estate shall be allowed to stockholders according to the terms and conditions of their subscription.

Disbursements to be made on warrants.

SEC. 23. All disbursements shall be made on warrants drawn upon the treasurer and signed by the president, and countersigned by the secretary; and no such warrants shall be drawn without the order of the board except as hereinafter provided. Each warrant so drawn shall contain, in a conspicuous place (when practicable,) the word or phrase designating the particular account to which the same belongs, and such warrants may be issued for the payment of all salaries, and for labor authorized by the board, and in payment of certificates of the chief engineers and of the superintendent, for work or materials on contract made in pursuance of any resolution or authority granted by the board, without a special order.

Warrants to be on order of board.

Warrants may be issued for salaries and on certificates of chief engineer and superintendent.

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Transfer agency in city of New York.

SEC. 24. An agency for the transfer of all paid stock which shall be entitled to a full dividend on the next regular dividend day after transfer, is hereby established in the city of New York, under the charge of such register or agent as shall be appointed from time to time by resolution of the board of directors. And the secretary may, on the request of any such stockholder, transfer to such agency the stock of any stockholder, which may thereafter be transferred at the New York agency, in the same manner that it could at the office of this company. The regular dividend days of the company shall be the first day of January and the first day of July.

Secretary to transfer stock to agency on request.

Dividend days.

Suspension, amendment, and repeal of by-laws.

SEC. 25. Any by-law may be suspended temporarily, at any meeting of the board, by a vote of two-thirds of all the members present; and any by-law, or the whole code, may be amended or repealed at any regular meeting of the board, by a vote of the majority of the entire board.

Exhibit I I, testified by E. H. Goodrich.—H. L. Palmer, auditor.

368 Regular meeting of the board held at the office of the company on the fifteenth day of October, 1856.

Resolved, That the following amendments of the by-laws of the said company be and are hereby adopted, viz: A new section, to be inserted between sections seven and eight, is hereby adopted, viz: Section eight. The railroads of this company for the purpose of construction are hereby divided into the following divisions, viz: the eastern, western, Fond du Lac, northwestern, northern, Madison and Portage divisions. First. The eastern division shall embrace the road from Milwaukee by way of Schleisingerville to Portage City. Second. The western division shall embrace the road from Portage City to La Crosse. Third. The Watertown division shall embrace the road from Milwaukee by way of Watertown to Portage City, or the intersection of the eastern division. Fourth. The Fond du Lac division shall embrace the road from Schleisingerville to Fond du Lac. Fifth. The northwestern division shall embrace the road from Portage City to the St. Croix river, or lake. Sixth. The northern division shall embrace the road from the point of intersection with the St. Croix river, or lake, to the west end of Lake Superior and to Bayfield, but if the road from the St. Croix river, or lake, to the west end of Lake Superior and to Bayfield shall for any portion of the way run over the route of the northwestern division, then the western terminus of the northwestern division shall be the point of intersection with the northern division. Seventh. The Madison division shall embrace the road from Watertown to Madison. Eighth, The Portage division shall embrace the road from Madison to Portage.

A true copy from the recorded minutes.

E. A. PATTERSON, *Clerk.*

369 *Exhibit K K.—Statement of mileage of rolling stock on the western division from the 13th of June, 1863, to 1st of July, 1864.*

LOCOMOTIVES.	Miles.
From 13th June, 1863, to February 1st, 1864	205,836
From February 1st, 1864, to June 1st, 1864	114,343
From June 1st, 1864, to July 1st, 1864	45,675
PASSENGER CARS.	
From June 13th, 1863, to March 1st, 1864	237,574
From March 1st, 1864, to June 1st, 1864	66,110
From June 1st, 1864, to July 1st, 1864	36,845
BAGGAGE, MAIL AND EXPRESS.	
From June 13th, 1863, to March 1st, 1864	180,232
From March 1st, 1864, to July 1st, 1864	22,040
FREIGHT CARS.	
From June 13th, 1863, to March 1st, 1864	1,255,723

From March 1st, 1864, to June 1st, 1864	704,277
From June 1st, 1864, to July 1st, 1864	359,491

Exhibit K K, testified to by E. H. Goodrich.

H. L. PALMER.

370 *Exhibit L L.—Statement of the operation of the eastern division of the La Crosse and Milwaukee railroad for the month of May, 1864.*

EARNINGS.

From freight	$81,987 03
passengers	22,723 66
mails, rents, and miscellaneous	884 96
use rolling stock	3,682 58
Total earnings	109,278 23

EXPENSES.

Of road	$14,802 37
bridges	151 90
buildings	848 62
locomotives	821 74
cars	1,723 64
tools and machinery	1,177 05
management and general offices	921 57
foreign agency and advertising	405 80
station service	4,058 48
stationery	482 95
conductors, baggagemen and brakemen	3,095 81
train and station supplies	887 53
engineers, firemen and wipers	4,878 18
oil and waste	2,248 07
fuel	4,743 00
loss and damage of freight and baggage	232 66
car service	222 85
miscellaneous expenses	120 07
animals killed	20 00
telegraph	71 88
use rolling stock	21,598 65
taxes, U. S. rev.	682 91
renewal of track	10,115 59
new buildings	6,533 74
furniture	43 76
Total expenses	80,879 82

Gross earnings	$109,278 23
Total expenses	80,879 82
Net earnings	28,398 41

Exhibit L L, produced and testified to by E. H. Goodrich.

H. L. PALMER, *Auditor.*

Exhibit I I, testified by E. H. Goodrich.—H. L. Palmer, auditor.

368 Regular meeting of the board held at the office of the company on the fifteenth day of October, 1856.

Resolved, That the following amendments of the by-laws of the said company be and are hereby adopted, viz: A new section, to be inserted between sections seven and eight, is hereby adopted, viz: Section eight. The railroads of this company for the purpose of construction are hereby divided into the following divisions, viz: the eastern, western, Fond du Lac, northwestern, northern, Madison and Portage divisions. First. The eastern division shall embrace the road from Milwaukee by way of Schleisingerville to Portage City. Second. The western division shall embrace the road from Portage City to La Crosse. Third. The Watertown division shall embrace the road from Milwaukee by way of Watertown to Portage City, or the intersection of the eastern division. Fourth. The Fond du Lac division shall embrace the road from Schleisingerville to Fond du Lac. Fifth. The northwestern division shall embrace the road from Portage City to the St. Croix river, or lake. Sixth. The northern division shall embrace the road from the point of intersection with the St. Croix river, or lake, to the west end of Lake Superior and to Bayfield, but if the road from the St. Croix river, or lake, to the west end of Lake Superior and to Bayfield shall for any portion of the way run over the route of the northwestern division, then the western terminus of the northwestern division shall be the point of intersection with the northern division. Seventh. The Madison division shall embrace the road from Watertown to Madison. Eighth, The Portage division shall embrace the road from Madison to Portage.

A true copy from the recorded minutes.

E. A. PATTERSON, *Clerk.*

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Exhibit K K, testified to by E. H. Goodrich.

H. L. PALMER.

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Total earnings	109,278 23

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Of road	$14,802 37
bridges	151 90
buildings	848 62
locomotives	821 74
cars	1,723 64
tools and machinery	1,177 05
management and general offices	921 57
foreign agency and advertising	405 80
station service	4,058 48
stationery	482 95
conductors, baggagemen and brakemen	3,095 81
train and station supplies	887 53
engineers, firemen and wipers	4,878 18
oil and waste	2,248 07
fuel	4,743 00
loss and damage of freight and baggage	232 66
car service	222 85
miscellaneous expenses	120 07
animals killed	20 00
telegraph	71 88
use rolling stock	21,598 65
taxes, U. S. rev.	682 91
renewal of track	10,115 59
new buildings	6,533 74
furniture	43 76
Total expenses	80,879 82

Gross earnings	$109,278 23
Total expenses	80,879 82
Net earnings	28,398 41

Exhibit L L, produced and testified to by E. H. Goodrich.

H. L. PALMER, *Auditor.*

371 *Milwaukee and St. Paul railway machine shops.—Report of repairs from June 13th, 1863, to June 1, 1864.—Main line.*

	Machinists' labor.	Carpenters' labor.	Blacksmiths' labor.	Painters' labor.	Painters' stock.	Copper and composition.	Lumber.	Wrought iron and steel.
Engines	$25,247 20	$2,374 09	$6,270 62	$1,224 03	$651 02	$4,492 50	$342 85	$3,324 21
Passenger cars	501 37	6,346 21	1,338 09	1,674 46	405 42	1,227 29	301 52	1,601 67
Baggage cars	36 25	488 87	105 39	169 03	66 83	479 43	247 73	203 43
Mail & express cars	12 50	128 20	35 01	23 70	15 00	214 85	15 45	26 38
Box cars	463 75	11,758 91	4,313 41	638 10	174 28	4,063 65	2,498 83	8,620 86
Flat cars	7 24	1,793 73	399 01	20 32	3 74	1,141 89	672 83	795 49
Caboose cars	110 59	311 59	52 91	5 12	4 61	315 59	43 19	132 87
Hand cars	452 99	333 74	120 17	23 97	30 07	57 79	15 60	291 48
Cars in general	.....	3,665 34	296 16	207 81	163 54	36 94	394 04	55 18

	Cast iron.	Springs.	Tires.	Wheels.	Axles.	Other materials.	Total.	Credits.	Total.
Engines	$1,525 52	.....	$5,760 63	$3,658 15	$336 12	$2,307 33	$57,514 36	$3,472 12	$54,042 24
Passenger cars	939 24	$431 98	.....	2,894 50	1,119 36	1,248 57	20,029 68	943 07	19,086 61
Baggage cars	112 74	5 00	.....	759 00	129 68	165 89	2,967 27	294 37	2,672 90
Mail & express cars	133 01	30 00	.....	361 00	164 60	102 20	1,261 90	202 46	1,059 44
Box cars	2,976 06	641 30	.....	7,299 62	2,133 00	505 99	51,297 78	3,895 03	47,402 75
Flat cars	614 16	212 00	.....	1,048 00	44 00	281 61	6,034 02	156 00	5,878 02
Caboose cars	160 86	36 00	.....	440 00	33 25	173 86	1,820 44	11 30	1,809 14
Hand cars	85 57	.....	.....	266 68	39 50	45 50	1,763 05	20 00	1,743 05
Cars in general	31 98	.....	.....	68 00	88 00	1,179 71	6,186 70	242 82	5,943 88

Engines, 31; passenger cars, 18; baggage cars, 9; mail and express cars, 3; mail and express cars, 2 mos., 3; box cars, 498; platform cars, 77, caboose cars, 6; hand cars, 45.

Exhibit M M, testified to by E. H. Goodrich.

H. L. PALMER, *Auditor.*

372 *Exhibit N N.—Statement of rolling stock purchased and built by H. Crocker, rec'r, from June 11th, 1860, to June 13th, 1863.*

Engines purchased: Nos. 22, 23, 24, 28, 29, 30, and 36.

Box cars purchased: Alternate Nos., 546 to 632, 650 to 728, 802 to 900—133 cars.

Box cars built: Alternate Nos., 446 to 544, 634 to 648, 730 to 800—94 cars.

Caboose cars built: Consecutive Nos., 1 to 6—6 cars.

Baggage cars built: No. 9—1 car.

Passenger cars built: Consecutive Nos., 19 and 20—2 cars.

The Milwaukee and St. Paul Railway Company delivered to the receiver, in pursuance of the order of court, made about May 1st, 1864, forty-seven and one-half per cent. of the foregoing, or so much as was on the road at that time not worn out or destroyed.

Exhibit N N, testified to by Hans Crocker.

H. L. PALMER.

373 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company *et als.*
} On reference to H. L. Palmer, auditor.

The respective parties stipulate that Sebre Howard, before the first day of June, 1860, to wit, January 5th, 1860, commenced suit by exhibiting in the district court of the United States for the district of Wisconsin his bill of complaint as a judgment creditor of the La Crosse and Milwaukee R. R. Co. against said company, and Selah Chamberlain, defendants, and that subpœna was duly issued and served, and that such proceedings were thereupon had that said court made, in said cause, on the 9th day of June, A. D. 1860, an order, a copy of which printed is hereto attached.

Dated Sept. 7th, 1864.

JAMES S. BROWN,
Of Counsel for Receiver.
MATT. H. CARPENTER,
For said Defendants.
CARY & PRATT,
For Complainants and Mil. & St. Paul Railway Co.

Exhibit O O.

H. L. PALMER, *Auditor.*

374 *Exhibit O O.—Appointment of receiver in the Howard case.*

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and Selah Chamberlain.

June 9, 1860.—This day came the parties by their counsel, and the rule of the complainant for an injunction and for the appointment of a receiver having been argued on the bill, records and affidavits submitted, on consideration whereof it is ordered by the court that an injunction be, and hereby is, allowed according to the prayer of the bill until the further order of this court. And this day the motion and rule of the complainant for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant and by Mr. Emmons for the defendant, Selah Chamberlain; the defendant, the La Crosse and Milwaukee Railroad Company, not appearing. On consideration whereof, it is ordered by the court that Hans Crocker be, and hereby is, appointed receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and

real property belonging to the said railroad company, and belonging to, or used, or connection with, said line of said road, (subject nevertheless to a previous order of court appointing him, the said Hans Crocker, to be the receiver for the western portion of said road
375 from Portage City to La Crosse,) and be at once put into possession of the same and every part and parcel thereof. And it is further ordered that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond with sureties, to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that he will duly manage and conduct said railroad and property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements according to the rules and practice and directions of this court. And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances and other personal property which belongs or has been procured for or used in connection with said railroad or any part thereof, which may have come to the hands of the said defendants or over which they have control, and that such receiver take possession thereof and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in any wise, and out of the same pay the expenses of the said receivership and the costs and expenses of operating and maintaining or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court. And it is further ordered that the said receiver and any other party in interest in this suit have leave from time to time to apply to this court for such further directions in respect to such property and the management and proceeds thereof as may be just and may be required. And same day bond of said Hans Crocker, as receiver, approved and filed.

Exhibit P P is a certified copy of the order of 12 June, 1863, in the Sebre Howard case, putting St. Paul Company in possession and modifying the order appointing the receiver, page 338, and will be found on page 338.

(Here follows map marked page 375.)

377 *Exhibit R R.—Deed to the city of Milwaukee, of July 13th, 1854, securing the issue of city bonds*—$200,000.

La Crosse and Milwaukee Railroad Company to the city of Milwaukee—Mortgage.

This indenture, made the thirteenth day of July, in the year one thousand eight hundred and fifty-four, between the La Crosse and

Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Ferdinand Kuehn, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of the said city of Milwaukee, party of the second part.

Whereas the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads," approved April 2d, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the La Crosse and Milwaukee Railroad Company," passed June 2d, 1853, and approved by the legal voters of said city at an election held for that purpose, according to law, on the 23d day of June, 1853, is to issue and deliver to the said parties of the first part the negotiable corporate bonds of the said city of Milwaukee in an amount or amounts not to exceed in all two hun-
378 dred thousand dollars, payable in twenty years from the date thereof, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the office of Duncan, Sherman & Co., in the city of New York, as a loan by the said city to the said railroad company, to aid in the construction of its railroad, under and in conformity with said act and ordinance above mentioned. And the said La Crosse & Milwaukee Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said company as aforesaid, did, on the 16th day of February, 1854, execute to Alexander H. Johnson, treasurer of the said city, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president, and countersigned by the secretary of said company, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the condition and covenants therein, that said railroad company shall punctually pay and discharge the principal and interest moneys of such bonds of said city as may be issued and delivered to said company as a loan aforesaid as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, costs, damages, and expenses which it may incur as sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company. Now, therefore, this indenture witnesseth, that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company, above stated, and in consideration of one dollar to them in hand paid at the sealing and delivery hereof by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer and convey to the said party of the second part, and to his successors in office, for the use and benefit of said city of Milwaukee, all the following present and future to be acquired property of the said parties of the first part, that is to say: The first part of the rail-

road of the said parties of the first part, commencing at the point where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, in the county of Washington; thence westward to the town of Beaver Dam, in the county of Dodge, being a distance of forty miles, including the right of way, land occupied or to be occupied by said railroad, together with
379 the superstructure and tracks thereon, and all rails and other materials used thereon, side tracks, bridges, viaducts, culverts, fences, equipments, depot grounds, and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property within the limits aforesaid, rights thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents and income, to be had or levied therefrom, and all franchise, rights, and privileges of the said party of the first part of, in, to, or concerning the same, as well that hereafter to be acquired and constructed as that already acquired and constructed under their said act of incorporation, wherever the same may be within the limits aforesaid; but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repairs of the remaining part of said road westward and northward, all stock, subscriptions, donations, and loans of money, and all bonds or other property not included in the foregoing description, and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose, but the said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part and his successors in office, it being distinctly understood that the conveyance made by this indenture is only for so much of the present rights, interest, or property, or in the future to be acquired rights, interests, and property of the said parties of the first part as do or may exist on that part of said railroad extending from the said road in the county of Washington, where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac, and Green Bay Railroad Company, westward to the town of Beaver Dam, in the county of Dodge, a distance of forty miles. To have and to hold the said rights, property, premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of the said city of Milwaukee forever; and the said parties of the first part hereby covenant to and with the said party of the second that the said parties *of the parties* of the first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free, and unincumbered, and that the said parties of the first part will forever warrant and defend the same to the said party
380 of the second part and his successors in office, for the use and benefit of said city, against all claims whatsoever, except, and this conveyance is made by the said company, and received by the said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises, and appurtenances

above described, executed thereupon, for a sum not exceeding ten thousand dollars for each and every mile of road embraced therein. This conveyance is intended as a mortgage the secure the punctual payment and discharge of the principal and interest moneys of the bonds of the said city of Milwaukee, to be issued and delivered as a loan to the said parties of the first part, in an amount not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the La Crosse and Milwaukee railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of the said parties of the first part, dated the sixteenth day of February, 1854, as aforesaid, and above alluded to; and in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds of the said city of Milwaukee, at any time when the same may become due and payable according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of the said company, then the said party of the second part, and his successors in office, may at once enter into and take possession of all or any part of the said premises and property for the use and benefit of the said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto; and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all of said city bonds as remains unpaid, and of all liabilities of the said parties of the first part upon their said bonds, or the said party of the second part, and his successors in office, at his or their discretion, may lease the said premises or property, or so much thereof as shall be necessary to pay and discharge the principal and interest of the said city bonds, so much thereof as may then be due and unpaid as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, losses, and expenses incurred in consequence of the issue of its said bonds, to be sold at public auction, in the city of Milwaukee,
381 in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specified property to be sold, by publishing the same in two newspapers of good circulation in each of the said cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof, at such sale, a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of the said first or prior mortgage, of all the right, interest, or claim in or to said premises and property, or any part thereof. And the said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and

to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part; it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction nor stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale, as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part and his successors in office, for the use and benefit of the said city, for more fully carrying into effect the object hereof, particularly for the consequence of any rights or property subsequently to the date hereof acquired by the said parties of the first part, and comprehended in the description hereinbefore contained. And the said parties of the first part hereby further covenant, for the consideration aforesaid, that the said city bonds so to be issued and delivered as a loan to the said parties of the first part, as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said section *of* division of forty miles of said La Crosse and Milwaukee railroad, and embraced, or intended so to be, within this indenture. And the said company do further covenant and agree, that the said prior mortgage or lien upon said property and premises, in case of default in the performance of the covenants and conditions therein contained, shall not authorize the sale of said mortgage premises and property for such default, without public notice of such sale being given in the manner required by law, and for at least ninety days prior to such sale; and these presents are upon this express condition, that on the payment by the said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to and of this indenture, the estate hereby granted to the said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revert in the said parties of the first part, without any acknowledgment of satisfaction, re-conveyance, warranty, or other act.

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In witness whereof the said La Crosse and Milwaukee Railroad Company have caused their corporate seal to be hereunto affixed, and these presents to be signed by their president and countersigned by their secretary, the day and year first above written.

[SEAL.] STODDARD JUDD,
President of the La C. & M. R. R. Co.

Signed and sealed in presence of—
J. H. DAWES,
R. WHITEHEAD.

STATE OF WISCONSIN, *Milwaukee county, ss:*

I, Robert Whitehead, notary public in and for said county of Milwaukee, do, by this instrument, given under my hand and official

seal, certify that on this 13th day of July, 1854, before me, personally appeared Stoddard Judd, who, being by me duly sworn, said that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the above instrument is the common and corporate seal of said company, and was affixed thereto by their authority, and that he, as president, subscribed his name thereto by the like authority, said Stoddard Judd being personally known to me to be the same person who executed said instrument.

[SEAL.] R. WHITEHEAD,
Notary Public, Milwaukee Co., Wisconsin.

Exhibit R R. H. L. PALMER.

383 Eastern division L. C. and M. R. R. C. in account with western division of Mil. and St. Paul R'y.

1864.

March 1.	To old rail, tons	148 $\frac{410}{2240}$
April 21.	To do. do	23 $\frac{1780}{2240}$
		171 $\frac{2190}{2240}$
1864.	Contra.	
Aug. 31.	By old rail, tons	42 $\frac{939}{2240}$
	Balance due west. div. M. and St. P. R'y, tons	129 $\frac{1251}{2240}$

Exhibit S S, testified to by E. H. Goodrich.

H. L. PALMER.

384 This contract, made and entered into by and between the Milwaukee and St. Paul Railway Company, by Edwin H. Goodrich, general manager thereof, party of the first part, and the Swedes Iron Company, by David A. Benjamin, treasurer of said company, party of the second part, witnesseth, that in consideration of the mutual covenants herein contained, said party of the first part agrees to receive and transport for said party of the second part iron ore, iron, coal, fire-brick, hearth-stone, and limestone to and from the mines of Iron Ridge, in Dodge county, Wisconsin, to the city of Milwaukee, and deliver the same at such point or points on the line of the railroad now known as the eastern division of the La C. and M. R. R., or on any branch connecting therewith in said city as may be designated by said party of the second part, for and at the price of sixty cents per ton of two thousand pounds, payable in gold or its equivalent in the legal currency of the United States, and if paid for in such currency the price shall be greater in the same ratio as the current value of the standard gold coin of the U. S. is greater than said currency, as the same shall be quoted from time to time at the Board of Brokers in the city of New York: provided, however, that when such quotations shall be such that gold is rated at three per cent. or less above such currency, then such currency shall for the purposes of this contract be rated at par. The quotations so made on the fifteenth day

of each month shall govern, under the terms of this contract, for payments that may be earned in all that month; but in case such quotations should not be made on the fifteenth day of any month, then the first quotation which shall be thereafter made from said board shall rule for the purposes of this contract during all of said month.

Also said party of the first part agrees to receive from said party of the second part all the above-mentioned articles at any point as aforesaid in the city of Milwaukee and transport and deliver the same to said party of the second part at such point at Iron Ridge as said party of the second part shall designate on the line of road aforesaid, or any branch connecting therewith, not exceeding three miles in length, at the price and on the terms above mentioned.

It is understood and agreed that said party of the second part will construct a good and permanent branch railroad in continuation of the side track now laid at Iron Ridge station, on the line of the railroad aforesaid, or from such other point on said railway as shall be agreed upon by the parties hereto, and thence to the Iron Ridge mines, and put the same in complete order for use, and grant to said party of the first part the right to use the same for the purpose of transporting the articles herein mentioned, and also for running trains for such other purposes as said party of the first part may require during the term of this contract, in consideration of the performance by said party of the first part of the covenants herein contained on its part, subject, however, to the right reserved by said party of the second part to have the free and unrestricted use of the same when not used by the party of the first part as above provided. And it is further understood and agreed that said party of the first part will loan to said party of the second part the iron rails that will
385 be necessary to lay the track of said branch road, not exceeding two miles in length, delivered at Iron Ridge station as soon as the same shall be graded and prepared for the rails; and said rails are to be replaced by said party of the second part as soon as the rolling mill now in contemplation of being erected by said party of the second part shall be in successful operation, not exceeding two years from the time the same are laid. And in further consideration of the use of said branch railroad, said party of the first part agrees to keep the same in repair so long as it shall continue to use the same under and by virtue of this contract. And further, said party of the first part agrees that the laboring men in the employ of the party of the second part may pass over the road to and from Iron Ridge and Milwaukee, when going to or returning from employment at the iron mines aforesaid, on the trains of ore cars, free of charge, on request of an officer or agent of said party of the second part duly authorized by said party. It is further understood and agreed that the accounts for freight shall be settled monthly up to the close of the month, and paid by said party of the second part on or before the tenth day of the succeeding month.

Said party of the second part, in consideration of the foregoing stipulations, agrees to pay the compensation aforesaid for the service stipulated, and load the cars furnished for that purpose by said

party of the first part with the articles herein mentioned to be transported, and unload the same at the point of delivery, and for such purpose will not detain said cars an unreasonable time, but will perform the necessary labor within a reasonable and proper time. And further, said party of *of* the second part will, on or before the fifth day of each month, notify the party of the first part what amount of ore will be required to be transported during said month. And when such notice is given, the minimum quantity to be carried from Iron Ridge to Milwaukee shall be twenty-five hundred tons in said month, and the maximum all that can be carried without depriving the public of the facilities required for the transportation of the country. And said party of the first part agrees to transport the amount so notified within said month, and when begun, the work to be continued on consecutive days regularly if practicable until finished, and to be done in such part of the month as may best suit the convenience of the party of the first part; but if such notice should not be given, then no amount shall be transported or paid for in the month when such notice is omitted. In case the party of the second part shall require to have ore transported previous to the completion of said branch road, said party of the first part agrees to carry and deliver the same from and to Iron Ridge station and Milwaukee on the same terms as above mentioned for doing the same service from and to the mines and Milwaukee. This contract is to be and continue in force for the term of five years from the first day of July next after date hereof, and to be then renewable on fair terms for such further time as may be agreed upon by the parties then in interest, under and through the parties hereto: Provided, however, that if, by the decision of the courts having jurisdiction of the cases now pend-
386 ing, said party of the first part should be dispossessed of the said railroad now in its possession, no damage shall in such case accrue against said party of the first part on account of the nonperformance of this contract on its part after such decision shall be made, unless reinstated in the possession of said road.

In testimony whereof, said corporations have caused these presents to be signed by their respective officers above named, and the corporate seals of each to be hereto affixed on the nineteenth day of March, A. D. 1864.

[SEAL.] SWEDES IRON COMPANY,
By D. A. BENJAMIN, *Treasurer.*

Attest:

H. COWLES, *Sec'y.*

[SEAL.] MILWAUKEE & ST. PAUL RAILWAY CO.,
By EDWIN H. GOODRICH, *Gen'l Manager.*

Attest:

A. CARY, *Sec'y.*

Exhibit T T, testified to by E. H. Goodrich.

H. L. PALMER.

387 *Statement showing the manner of payments for rolling stock by the La Crosse & Milwaukee Railroad Company.*

In cash		$293,368 16
In capital stock	$189,000 00	
Discount	17,960 00	
		171,040 00
In bonds	84,300 00	
Discount	7,340 00	
		76,960 00
		541,368 16

Exhibit U U testified to by E. H. Goodrich.

H. L. PALMER.

388 *Exhibit V V.—Milwaukee and St. Paul Railway, Auditor's Office, Sept. 15th, 1864. Statement of earnings of eastern division from August 20th, 1864, to August 31st, 1864, (inclusive,) and from September 1st to Sept. 10th, 1864, (incl.)*

Freight during the ten days of Aug., $17,095 60.	$1,709 56 per day.
Passengers during the ten days of August, $18,205 06	1,820 50 per day.
Total	3,530 06 per day.
Freight during the ten days of Sept., $13,550 10.	$1,355 01 per day.
Passengers during the ten days of September, $12,196 05	1,219 60 per day.
Total	2,574 61 per day.

Exhibit V V, testified to by E. H. Goodrich.

H. L. PALMER.

Exhibit W W.—Statement of earnings of the eastern division of the La Crosse and Milwaukee railroad, from Milwaukee to Portage, from August 20th, 1864, to August 31st, 1864, inclusive, and from 1st September to 10th September, 1864, inclusive.

Freight during last 10 days of August, (rate of $1,709 50 per day)	$17,095 60
Passengers same time, (rate of $1,820 50 per day)	18,205 06
Freight 10 days September, (rate of $1,355 per day)	13,550 10
Passengers same time, (rate of $1,219 60 per day)	12,196 05

Exhibit W W, testified to by Hans Crocker.

H. L. PALMER.

389 *Exhibit X X.—H. L. Palmer.—Copy of letter of Bronson and Soutter to Selah Chamberlain demanding possession of premises mortgaged.*

MILWAUKEE, *May* 18, 1860.

Selah Chamberlain, Esq.:

D'R SIR: On the 21st day of November last we demanded from you the possession of the railroad, rolling stock, and appurtenances, conveyed to us by the mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company, dated August 17th, 1857, upon which demand we were placed in possession only of the receipts and earnings of the railroad. We now demand the actual possession of the railroad, rolling stock, and appurtenances covered by our said mortgage.

Respectfully,

GREEN C. BRONSON,
JAMES T. SOUTTER, *Trustees.*
By their attorney in fact, PRENTIS DOW.

Exhibit X X.—H. L. Palmer.—Copy of answer of Selah Chamberlain to Bronson and Soutter letter of May 18, 1860.

To Messrs. Green C. Bronson and James T. Soutter, trustees:

In compliance with your demand of November 21, 1859, renewed on the 18th instant, I hereby surrender to you the possession of the eastern division of the La Crosse and Milwaukee railroad, (now known as the Milwaukee and Minnesota railroad,) with the rolling stock and other appurtenances covered by or included in the mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company to you, as trustees, to be held by you under said mortgage or deed of trust according to its terms and conditions, but hereby protesting and insisting that the mortgage of the La Crosse and Milwaukee Railroad Company to me, (commonly called a lease,) and bearing date the 26th day of September, 1857, under which I hold, and have held, possession, is a subsisting and valid incumbrance, and good against all persons or parties claiming subsequent to the same. I surrender possession to you as having a prior lien or right only, and I retain all rights and claims under my said mortgage, and shall, as soon as the amount due on said mortgage or trust deed for interest is satisfied, demand the redelivery of said road to me. I desire that an immediate inventory of all movable property herewith delivered be taken, and that you give me your acknowledgment of the receipt of the same.

Milwaukee, May 19, 1860. S. CHAMBERLAIN.

390 *Exhibit Y Y* 1.

Advertisement of sale by the marshal contains the same description of the mortgage premises as is in the mortgage, with this addition, viz:

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December,

A. D. 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars, and said proportion of rolling stock purchased by the receiver, are to be sold free and clear of any incumbrance whatever."

Exhibit Y Y 2.—Confirmation of sale.

This day came the parties, by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it is ordered by the court that said exceptions be, and are hereby, overruled.

And it is further ordered and decreed by the court that said sale so as aforesaid made be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

Exhibit Y Y 3.—Description of premises in marshal's deed and in deed from purchasers to Milwaukee and St. Paul Railway Co.

"All and singular the lands granted, or intended to be granted, to said La Crosse and Milwaukee Railroad Company under and
391 by virtue of an act of Congress of the United States, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, A. D. 1856, and under and by virtue of an act of the legislature of the State of Wisconsin, approved October 11, A. D. 1856, entitled 'An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison by way of Portage City to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereof and thereunto belonging, or in any wise appertaining; and also all and singular the several tracts, pieces, or parcels of land which constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute a part of the roads of said railway company from Madison by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads; and also all and singular the locomotive engines and other rolling

stock, and all the other equipments of every kind and description which have been procured for said roads or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connexion with said roads or either of them; and also all and singular the rights, liber-
392 ties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said roads, of said rolling stock forty box cars numbered, respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion and share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the mortgage upon which said decree was entered bears to the balance or other end of the road, is hereby conveyed free and clear of all lien or incumbrance; but all the remainder of the above mentioned rolling stock is conveyed subject to the lien of mortgages prior in date to the mortgage above mentioned given by said La Crosse and Milwaukee Railroad Company, together with the tolls, rents, and income to be had or levied therefrom, and all corporate and other rights, franchises, and privileges of the said company, of, in, and to, or concerning the same, being all the property described in the mortgage upon which said decree was entered, and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in any way appertaining."

Exhibit Y Y 4.—*Order of June* 12*th*, 1863, *in western division.—Foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on
393 the first Monday (being the fifth day) of January, A. D. 1863: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the 18th day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, *vs.* La Crosse and Milwaukee Railroad Company, J. Albert Helfenstein, trustee, *et als.* In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel. it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, and *and* all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree. And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court; and it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

394 *Exhibit A A A.*

Memorandum of agreement, made this third day of May, 1864, by and between Hans Crocker, receiver of the eastern division of the La Crosse and Milwaukee railroad, of the city and county of Milwaukee and the State of Wisconsin, party of the first part, and Lewis J. Higby, of the same place, party of the second part, witnesseth: That the contracts made in form of leases and hereunto attached, and made by S. Chamberlain, lessee of the La Crosse and Milwaukee Railroad, June 10th, 1858, and the Milwaukee and Minnesota Railroad Company, June 30th, 1859, and the Milwaukee and St. Paul Railroad Company, June 30th, 1863, to L. J. Higby, are hereby continued in full force to the full end and time. I may hold possession of said La Crosse and Milwaukee railroad on the conditions as specified in the lease of the Milwaukee and St. Paul Railroad Company, June 30th, 1863, and the La Crosse and Milwaukee Railroad Company, July 30th, 1859.

HANS CROCKER,
Receiver, La Crosse and Milwaukee Railroad,
By EDWIN H. GOODRICH,
General Manager.
L. J. HIGBY.

Witness: THEODORE HIGBY.
WILLIAM SIMMONS.

Exhibits A A A, testified to by L. J. Higby.
H. L. PALMER, *Auditor.*

395 *Exhibit B B B.*

The Milwaukee and Minnesota Railroad Company assents to and confirms the foregoing lease, and extend the same to the first day of June, 1868, upon the following terms and conditions, to wit:

The said Higby shall pay all taxes and assessments that may be levied or assessed by virtue of any law of this State upon the buildings or improvements erected or used by him on said leased premises.

He shall not sell or assign the said lease, nor sell nor underlet the buildings or improvements on said premises, or any part thereof, without the written consent of the said company indorsed hereon.

The said company shall have the right at any time, upon ten days' notice, to put an end to and determine this lease, upon paying to the

said Higby the value of the buildings he may have erected or may erect hereafter on said leased premises.

In case the parties hereto cannot agree as to the value of such buildings, the matter shall be referred to two referees; one to be chosen by each party, and the two so chosen may select a third referee, and the award of a majority of the referees shall be final and conclusive between the parties; until such award be paid, the said Higby shall retain possession of said premises. In arriving at such value the referee shall merely estimate the then value of such buildings, not taking into consideration their value or productiveness in connection with said lease.

The said Higby shall, by the first day of October next, erect such other buildings on said premises as shall enable him to receive, store, and ship, with all reasonable despatch, all grain that may come over the company's road during the season of navigation, and from time to time furnish such facilities as may be required for the proper storing of grain while navigation may be closed. Any buildings which said Higby may erect shall be subject to approval of said company.

The said Higby agrees to the foregoing terms.

Milwaukee, July 30, 1859.

The Milwaukee and Minnesota Railroad Company, by
N. J. EMMONS, *Vice-President.*

Attest:
DWIGHT W. KEYES, *Sec'y.*
L. J. HIGBY.

Exhibit B B B, testified to by L. J. Higby.
H. L. PALMER, *Auditor.*

396 *Exhibit C C C.*

Memorandum of agreement, made this 10th day of June, A. D. 1858, by and between Selah Chamberlain, of Cleveland, Ohio, mortgagee in possession of the La Crosse and Milwaukee Railroad, and Lewis J. Higby, forwarding and commission merchant, of the city of Milwaukee, witnesseth: That the said party of the first part, for and in consideration of the covenants hereinafter made by the party of the second part, hereby agrees to permit and does permit the said party of the second part to occupy and use the rear or river front of lots one and two, in block forty-one, east of the present track, together with the building situated on the same, in the second ward of the city of Milwaukee, Wisconsin, and also as much of the rear parts of lots 3, 4, 5, 6, 7, 8 and 10, in said block 41, laying east of said railroad track and platform as now laid down and in use, as may be necessary to store and ship all the grain, flour, and rolling freight that may be brought in on the said La Crosse and Milwaukee railroad, consigned to or sent to the said second party, and for the receiving and storing and shipping all goods, wares, and merchandise that may be landed on said lots for shipment on said La Crosse and Milwaukee railroad, and for the accommodation of vessels and steamers bringing merchandise to said grounds or docks of the said railroad for and during the full

time and term of five years, provided said party of the first part shall retain the possession of the said La Crosse and Milwaukee railroad, and the premises herein described, during that length of time, and not otherwise. And the said party of the first part agrees to switch all cars laden with grain, flour, or other rolling freight to be unladen, stored or shipped by said party of the second part, or cars to be laden with goods or merchandise, to go out on or over the said La Crosse and Milwaukee railroad, on the track adjoining said building and lots at convenient and proper places to be unloaded or loaded.

For and in consideration of the above agreements and privileges the said party of the second part agrees to repair the dock on the said lots, and to repair the building now on the same, and to fit up the same so as to receive and store grain in bulk, and to put in and operate an engine and machinery of sufficient power to receive and ship three thousand bushels of grain per hour, and to pay to the said party of the first part all charges of freightage on grain, flour, or other freight, on the receipt of the same, consigned to or sent to the said party of the second part, and to deliver to the owners or consignees of
397 the same on payment of advances and the following charges, viz: one cent per bushel on grain in bulk for the first ten days, and one-fourth of a cent additional for each five days thereafter, until the said charges shall amount to four cents per bushel, which shall be the maximum rate; and on flour and other freights three cents per barrel for the first ten days, and one-half a cent additional for each five days thereafter, until the said charges shall amount to ten cents per barrel, which shall be the maximum rate.

And the said party of the second part further agrees to receive, store and ship on board the cars of the La Crosse and Milwaukee railroad all the commodities, goods, wares and merchandise that may be landed on said lots and docks by any and all steamers or vessels destined to be transported over the said railroad free of any charge to the said party of the first part or to the owners or consignees of said commodities, goods, wares and merchandise, the risk of the elements excepted.

It is also agreed that at the expiration of this agreement the said party of the second part may take away any and all movable fixtures he may have put on said building or lots without hindrance or molestation from the said party of the first part.

SELAH CHAMBERLAIN,
Mortgagee in possession of La Crosse and Mil. R. R.
By EDWIN H. GOODRICH, *Manager.*
L. J. HIGBY.

Exhibit C C C, testified to by L. J. Higby.

H. L. PALMER.

398 *Exhibit D D D.*

This memorandum of agreement, made this 30th day of June, 1863, between the Milwaukee and St. Paul Railway Company, party of the first part, and L. J. Higby, party of the second part, witnesseth: That

the said party of the first part hereby agrees to continue the lease or permit heretofore granted by Selah Chamberlain, mortgagee, etc., to the said party of the second part, (and to which reference is now made,) substantially upon the same terms as are provided therein and as are provided by an agreement thereto attached and executed by the Milwaukee and Minnesota Railroad Company with said party of the second part so far as it is practicable so to do, provided the said party of the second part will assume and conduct the in and out freight business of the party of the first part, at the Milwaukee station, in the sixth ward of the city of Milwaukee, at his own cost and charge and free of expense to the said party of the first part; said freight business to be done in conformity to the rules and regulations of the party of the first part as issued and established by competent authority from time to time.

The party of the second part, for and in consideration of the benefits and advantages to be derived by him from the handling and storage of grain and flour delivered to him by the party of the first part, hereby agrees to continue and conduct the said business of receiving, storing and shipping grain, and otherwise to fulfil and carry out all the stipulations and conditions contained in the said agreement, lease or permit, with said Chamberlain, and the supplemental contract attached, which is hereinbefore referred to, and to assume and to conduct the in and out freight business at the Milwaukee station, as herein set forth, at his own cost and charge, and free of expense to the said party of the first part.

The party of the first part hereby consents to allow the said party of the second part to charge two cents per bushel on grain in bulk for the first twenty days in the place, instead of one cent per bushel for the first ten days, as provided in the said lease or permit, hereinbefore referred to, as made with Selah Chamberlain, the said rate of two cents being the established and customary rate at other grain elevators in the city of Milwaukee.

Milwaukee and St. Paul Railway Company, by
EDWIN H. GOODRICH, *General Manager.*
L. J. HIGBY.

Exhibit D D D, testified to by L. J. Higby.

H. L. PALMER.

399 *Exhibit E E E.*

U. S. OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 20th day of September, in the year of our Lord

one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

U. S. district court, district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepard Knapp, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstein, *et als.*

June 29th, 1861. Ordered, that there be paid by the receiver, on the judgment of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, ten thousand dollars in currency, at par, to be receipted for by Messrs. Finches, Lynde and Miller, attorneys of the said plaintiffs.

Exhibit E E E. H. L. PALMER, *Receiver.*

400 *Exhibit F F F.*

U. S. OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 20th day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

U. S. district court, district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepard Knapp, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstein, trustee, *et als.*

July 18th, 1861. Ordered, that there be paid by the receiver, on the judgment of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company, twenty thousand dollars in currency, at par, to be receipted for by Messrs. Finches, Lynde and Miller, attorneys for the said plaintiff.

Exhibit F F F. H. L. PALMER, *Auditor.*

401 *Exhibit G G G.*

U. S. OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America, for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 20th day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

GREENE C. BRONSON AND JAS. T. SOUTTER, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company *et als.* — In equity.

April 22d, 1861. Ordered by the judge, that the receiver pay twenty-eight thousand eight hundred and one dollars and ninety-two cents ($28,801 92,) being the interest and costs of the judgment of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company to this date.

Exhibit G G G. H. L. PALMER, *Auditor.*

402 *Exhibit H H H.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 20th day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

U. S. circuit court, district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, trustees, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD Company, Selah Chamberlain, *et al.*

November 28th, 1862. Ordered, that the receiver pay out of the funds in his hands fifteen thousand dollars, on the judgment of New-

comb Cleveland, assigned to Selah Chamberlain, against the La Crosse & Milwaukee Railroad Company; to be receipted for by Messrs. Emmons and Van Dyke, att'ys for Chamberlain.

A. G. MILLER, *Judge.*

Exhibit H H H. H. L. PALMER, *Auditor.*

403 *Exhibit J J J.*

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } Hearing before H. L. Palmer, esq., auditor.

Account made and presented before the said auditor by the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, based upon the exhibits and testimony before the auditor.

This account is made out, covering the whole term from appointment of the receiver to March 1st, 1865, upon the theory that the receiver is responsible for the administration of the directors of the Milwaukee and St. Paul Railway Company, and that said directors of said company are to be regarded as his agents.

Exhibit J J J. H. L. PALMER.

404 Hans Crocker, Receiver, Dr.

To amount of gross receipts arising from the operation of the eastern division from June 11th, 1860, to June 13th, 1863, as per account "D," before auditor	$2,130,748 23
To gross earnings of eastern division from June 13th, 1863, to and including February 28th, 1865, as per Exhibit "E," and continuation of "E," before auditor	1,273,113 32
To use of engines belonging to the eastern division on the western division, (as receiver of western division,) from June 11th, 1860, to June 13th, 1863, 739,747 miles, as per Exhibit "C," 17 cents per mile, being the average value of such use during said period, as per testimony of Mr. Goodrich before auditor	125,756 99
To mileage of other rolling stock on western division for the same period, declared by Mr. Goodrich in his testimony before the auditor, April 28th, 1865, to be equal in value to the use of engines	125,756 99
To mileage of rolling stock on the western division from June 13th, 1863, to June 30th, 1864, at rates fixed by E. H. Goodrich, as per Exhibit "K K," before the auditor	160,948 18

To mileage of rolling stock on the western division from June 30th, 1864, to September 1st, 1864, being two months not included in the last item, which is only brought down to June 30th in the exhibit marked "K K," and is now continued to September 1st, 1864, as per statement filed by Mr. Goodrich before the auditor, and marked Exhibit Y Y Y..... 30,941 05

To use of rolling stock on the Milwaukee and St. Paul Company's entire line of road, from September 1st, 1864, to February 28th, 1865. On the 1st September, 1864, the Milwaukee and St. Paul Company opened their new road for trains, by way of their Watertown extension, and took off all of the rolling stock from the eastern division to operate their said new road, and have so continued to use it. The eastern division, to which all the rolling stock, except forty box cars, belongs, now charges for the use of their rolling stock, being six months on their entire road, as per statement of mileage and rates filed by Mr. Goodrich with the auditor, and marked Exhibit Z Z Z... ..... 111,839 69

To rent of repair shops on the eastern division from June 13th, 1863, to February 28th, 1865; value of the same fixed by Mr. Goodrich in his testimony before the auditor..... 8,541 66

To freight of 1,300 tons iron carried free for St. Paul Company from Milwaukee to Portage, as per testimony of Mr. Goodrich..... 1,625 00

To freight of 36 car loads of ties, carried free for St. Paul Company from Milwaukee to Portage, as per testimony of Mr. Goodrich..... 360 00

To deficiency on business done for the Horicon road. The lowest rates established for doing this business prior to June 13th, 1863, was 50 per cent., as the eastern division was only allowed 30 per cent. during a period of very high cost for labor and materials, from the St. Paul Company, controlling the eastern division, and thus making both sides of a bargain in their own favor. The eastern division now charges the difference, viz: at 50 per cent. the eastern division would have received · $76,133 55.
At 30 per cent. it received..... 45,680 15

Deficiency charged..... 30,453 40

406 To interest on average balance of cash in your hands. as shown by returns of your bank account, filed with auditor, and marked Exhibit O O O..... 16,039 25

To amount of supplies in the repair shops on the eastern division on the 13th June, 1863, when the St. Paul Company took possession of said eastern division, and which were not credited to the eastern division in any way, but have been used by the St. Paul Company in repairing the rolling stock, and as the eastern division has now credited in this account the whole amount of repairs of the rolling stock, it now charges the amount of the said supplies, as per statement filed with the auditor, and marked Exhibit No. 7	87,147 04
To value of 13,903 cords of wood on eastern division, on June 13th, 1863, when the St. Paul Company took possession, at $2 50 per cord; see Exhibit No. 7, showing this amount of wood to have been on the eastern division, and see also Goodrich's testimony that the eastern division has been charged by the St. Paul Company ever since they have had possession for all the wood used on it, to the amount, as shown under item "Fuel, $55,992 74," in Exhibit E, and continuation of E; the eastern division is therefore entitled to a credit for the amount found on it when it was taken by the St. Paul Company	34,757 50
	4,138,028 60
To balance due Milwaukee and Minnesota Railroad Company	1,078,372 38

405 Hans Crocker, Receiver, Cr.

By expenses from June 11th, 1860, to June 13th, 1863	$412,373 34
By other expenditures, same time	723,691 93
By cost of mileage, same time, as per Exhibit "D"	670,820 01
By amount of order of court in Howard case	1,000 00
By amount of rolling stock purchased by the receiver, as per Exhibit "C"	191,722 87
By the following items, being the credits since June 13th, 1863, the day on which the St. Paul Company took possession of the eastern division, as shown in Exhibit "E," and continuation of "E," viz:	
By repairs of track, eastern division	187,477 73
" " bridges, "	8,567 06
" " fences, "	591 89
" " buildings, "	14,250 44
" " locomotives, "	19,003 15
" " cars, "	36,271 07
" management, &c	16,861 78
" foreign agencies	9,306 43
" station services	73,171 07

By printing and advertising		7,820 90
" conductors, baggagemen, and brakemen		44,153 51
" train and station supplies		10,419 95
" engineers, firemen, and wipers		67,220 36
" oil and waste		25,883 71
" fuel		55,992 74
" loss and damage		2,200 43
" personal injuries		480 88
" car service		4,760 77
" miscellaneous		2,569 02
" telegraph		740 98
" passenger earnings refunded		1,365 92
" freight " "		5,649 68
" mail " "		96 19
" rents		82 67
" U. S. revenue tax		14,886 23
" renewal of track		115,423 45
" animals killed		1,377 00
" rent of track		40 00
" furniture		983 31
" fencing		1,392 36
" State taxes		30,443 64
" legal expenses		6,629 23
" New York office expenses		2,007 05
" right of way		190 00
" purchase of rails		23,232 00
" locomotive service		1,732 00
" interest and exchange		83 16
" H. Crocker, receiver		764 10
By salary as receiver of the whole road, from June 11th, 1860, to June 13th, 1863, or three years, being at $5,000 per year, $15,000, and charging one-half of this sum to the eastern division, is		7,500 00
By salary as receiver of the eastern division, from June 13th, 1863, to February 28th, 1865, though the services performed were merely nominal, the St. Paul Company being in the possession of the eastern division, at same rate of $5,000 per year, is for said period of 1 year, 8 months, and 17 days.		8,582 92
407 By repairs of rolling stock, as made by the Milwaukee and St. Paul Railroad Company, from June 13th, 1863, to June 30th, 1864, as per statement filed by Mr. Goodrich, for the Milwaukee and St. Paul Railway Company, with the auditor, and marked Exhibit M M, amounting to $139,638 03		
Less amount charged to the eastern division, as per Exhibit E	28,423 99	
		111,214 04

By repairs of rolling stock from June 30th, 1864, to September 1st, 1864, as made by the Milwaukee and St. Paul Railway Company, being 2 months, as per Exhibit No. 3, filed with the auditor; the whole amount charged to the western division for that time was $30,133 11-100, of which sum the Milwaukee and Minnesota Railroad Company assumes as its proportion 924-1000, amounting to	27,842 99
By repairs of rolling stock, as made by the Milwaukee and St. Paul Railway Company, from September 1st, 1864, to March 1st, 1865, as per Exhibit No. 2, filed with the auditor, amounting to $178,687 52. The Milwaukee and Minnesota Railroad Company assumes as its proportion of said sum 62 per cent., amounting to	110,786 26
	3,059,656 22
Balance due Milwaukee and Minnesota Railroad Company	1,078,372 38
	4,138,028 60

408 *Continuation of Exhibit J J J.*

Account made and presented before said auditor by the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, based upon the exhibits and testimony before the auditor, and embracing a portion of the account filed with the auditor, and marked Exhibit J J J, for which it is claimed that the Milwaukee and St. Paul Railway Company, or rather Russell Sage, Alexander Mitchell, and others, calling themselves the Milwaukee and St. Paul Railway Company, are liable as agents and receivers under the receiver, or what they are liable for, if they are to be treated as receivers distinct from Crocker, being formed from certain items in Exhibit E and continuation of E, objected to by the Milwaukee and Minnesota Railroad Company, which that company claims as credits, and certain other charges which the Milwaukee and Minnesota Railroad Company claims to have the right to make against the directors of the Milwaukee and St. Paul Railway Company.

409 Directors of Milwaukee and St. Paul R'y Co., Dr.

To use of rolling stock from June 13th, 1863, to September 1st, 1864, being the amount charged by the St. Paul Company to the eastern division for the use of stock on eastern division, (95 miles,) in accounts filed with the auditor by the St. Paul Company, and marked Exhibit E and continuation of E	$202,311 16

To balance of cash due the eastern division, March 1st, 1865, as per accounts filed with the auditor by the St. Paul Company, and marked Exhibit E and continuation of E, showing the amount in their hands belonging to the eastern division at that date..... 108,920 81

To use of rolling stock on western division from June 13th, 1863, to June 30th, 1864, from a statement of the mileage and rates proper to be charged for it, filed by Goodrich, for the St. Paul Company, with the auditor, and marked Exhibit K K..... 160,948 14

To use of rolling stock on the Milwaukee and St. Paul Company's entire line of road, from La Crosse to Milwaukee, by way of their new Watertown extension, being some 200 miles. This item commences on the 1st of September, 1864, when the Watertown item of "use of rolling stock, $202,311 16" ends; branch was first opened for trains, and where the said items in Exhibit E and its continuation being only brought down to September 1st, 1864, when the St. Paul Company ceased to charge the eastern division for the use of rolling stock, having on that day taken it all away from the eastern division, and placed it upon their new Watertown branch. The whole rolling stock was, therefore, used on the St. Paul Company's entire road, to the complete exclusion of the eastern division, to which it belongs. The eastern division now charges the directors of the St. Paul Company for the use of it on 200 miles of road, from September 1st, 1864, to March 1st, 1865, as per statement of mileage and rates filed by Goodrich, for the St. Paul Company, with the auditor, and marked Exhibit Z Z Z..... 111,839 69

To use of rolling stock on western division from June 30th, 1864, to September 1st, 1864, being two months not included in Exhibit marked K K, and now brought down to September 1st, 1864, as per exhibit filed by Goodrich for the St. Paul Company, and marked Exhibit Y Y Y..... 30,941 05

To use of rolling stock on western division from April 25th, 1863, to May 1st, 1863, inclusive..$2,396 48

Same from May 1, 1863, to June 1, 1863, inclusive..... 11,958 02

Same from June 1, 1863, to June 12, 1863, inclusive..... 4,672 79

Total..... 19,027 29

This sum of $19,027 29 forms part of the item "No. 38," in Exhibit E, "Milwaukee and St. Paul Railway Company, $109,950 82," and was the charge

made in that account by the St. Paul Company for use of rolling stock for the periods above specified, against the eastern division. As the rolling stock belongs to the eastern division, it must be charged back again to the directors of the St. Paul Company, who have had this amount wrongfully from the eastern division. See testimony of D. W. Keys, August 22, 1864 ..... 19,027 29

To rent of repair shops on the eastern division from June 13th, 1863, to February 28th, 1865, 1 year, 8 months and 15 days, as per testimony to value of same, by Goodrich 8,541 66

To freight of 1,300 tons of iron, carried free for St. Paul Company to Portage, as per testimony of Goodrich 1,625 00

To freight of 36 car-loads of ties, carried free to Portage for St. Paul Company, as per testimony of Goodrich 360 00

411 To repairs of tools and machinery from June 13th, 1863, to February 28, 1865. Exhibit E and continuation of E 15,993 19

To deficiency of business on the Horicon road, as set forth in the account with H. Crocker, receiver 30,453 66

To new buildings, as shown in Exhibit E and continuation of E, filed by the St. Paul Company with the auditor, being the amount expended by them in extending the repair shops on the eastern division, and other buildings, for doing which, as the testimony shows, they had no authority from the court, and as the Supreme Court has decided them to have had no legal possession of the eastern division, cannot be charged to that division. The enormity of this charge is further shown in the fact that the St. Paul Company had already, during the same period, charged the eastern division for "repairs of buildings," in Exhibit E, a sum of $14,250 54, making the account for buildings in 20 months $48,804 91, viz:

Repairs of buildings	$14,250 44	
" new buildings	34,554 47	
		48,804 91

We therefore claim that we should not be charged for buildings we did not want, made without any order of court by a party illegally in possession of our property, a sum of 34,554 47

To amount supplies in the repair shops on the eastern division on the 13th June, 1863, as per inventory filed in the case, by order of court, June 10th, 1863, and now before the auditor, marked Exhibit No. 7 .. 87,147 34

To value of 13,903 cords of wood, June 13th, 1863, when the St. Paul Company took possession of eastern division, said wood being at that date on the eastern division, as per inventory filed in the case, by order of court, June 10th, 1863, and now before the auditor, marked Exhibit No 7—13,903 cords, at $2 50 per cord 34,757 50

847,420 96

To balance due the Milwaukee and Minnesota Railroad Company by the directors of the Milwaukee and St. Paul Railway Company 597,577 67

410 Directors of Milwaukee and St. Paul R'y Co., Cr.

By repairs of rolling stock made by the Milwaukee and St. Paul Company, from June 13th, 1863, to June 30th, 1864, as per statement filed by Goodrich for the St. Paul Company, with the auditor, and marked Exhibit M M $139,638 03
Less amount charged to the eastern division, as per Exhibit E 28,423 99
111,214 04

By repairs of rolling stock, from June 30th, 1864, to September 1st, 1864; the whole amount charged to the western division for the said two months being, as per Exhibit No. 3, filed with the auditor, $30,133 11, of which sum the Milwaukee and Minnesota Company assumes as its proportion 924-1000, or 27,842 99

By repairs of rolling stock by the Milwaukee and St. Paul Company, from September 1st, 1864, to March 1st, 1865, as per Exhibit No. 2, filed with the auditor, amounting to $178,687 52; the Milwaukee and Minnesota Company assumes as its proportion of said sum 62 per cent., amounting to 110,786 26

412 Balance due Milwaukee and Minnesota R. R. 597,577 67

847,420 96

413 *Exhibit K K K.*

Circuit court United States, district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et als.*

The Milwaukee and Minnesota Railroad Company takes special exceptions to the following items of account, marked Exhibit C, before the auditor, viz: 1, Cleveland judgment, $73,801 92. 2, new buildings, $10,757 88.

And upon the account marked Exhibit H, before the auditor, excepts to the items: 3, No. 7, repairs, tools and machinery, $6,978 83. 4, No. 28, new buildings, $27,497 84. 5, No. 38, Milwaukee and St. Paul Co., $109,950 82. 6, No. 39, use of rolling stock, $166,192 30.

By MATT. H. CARPENTER, *Solicitor.*

This exception is made upon the understanding by me that the payment of the different sums mentioned in items 1, 2, and 4, above mentioned, have been in fact made by the receiver. My exception is to the propriety of such payments, and I object to their being allowed to the receiver upon that ground.

M. H. CARPENTER.

Exhibit K K K, presented by Mr. Carpenter.

H. L. PALMER, *Auditor.*

414 Circuit court United States, district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

The Milwaukee and Minnesota Railroad Company takes special exceptions to the following items of account in the account rendered by the receiver, and marked by the auditor continuation of Exhibit E, viz: 1, repairs, tools, and mach., $9,015 16. 2, new buildings, $7,057 13. 3, Mil. and St. Paul Co., $109,950 82. 4, use of rolling stock, $36,118 86.

This objection is made upon the understanding that the payment of the sums mentioned have been in fact made by the receiver. Exception is taken to the propriety of such payment and to their lien.

M. H. CARPENTER, *Sol'r of Deft.*

Exhibit K K K, continued.

H. L. PALMER.

415 *Exhibit L L L.*

H. Crocker, receiver in the case of Bronson, Soutter and Knapp, trustees, *vs.* La Crosse and Milwaukee R. R. Co. *et als.*, in acc. with Cary & Pratt, Dr.

1860.

July and Sept. To services in Davis matter: Mr. P. to Madison once; Mr. C. twice; Mr. P. to Portage, from Portage to Madison, return to P. and back to Madison; Mr. C. from Milwaukee to Madison in and about matter of injunction, stopping of trains, application to Supreme Court for writ of habeas corpus, and argument on turn on same $500 00

1861.

May 1–June 12. To services in settlement right of way with Judge Dixon 25 00

May 1–June 12.	To procuring order for building elevator at La Crosse	50 00
May 1–June 12.	On petition suit in circuit court, making case on appeal, preparing brief, and argument of appeal in Supreme Court	500 00
August.	To ser. preparing application for appointment of commissioners, notices, attendance at Madison, made application to Supreme Court, and proving appointment of commissioners to appraise dues for right of way between Portage and La Crosse and Milwaukee to Horicon	75 00
		1,150 00

Exhibit L L L. H. L. PALMER.

416 *Exhibit M M M.*

H. Crocker, receiver in the case of Sebre Howard *vs.* La Crosse and Milwaukee Railroad Co. *et als.*, and in case of Bronson and Soutter, trustees, *vs.* La Crosse and Mil. R. R. Co. *et als.*, in ac't with Cary & Pratt, Dr.

1860.			
Oct.	27.	To services in municipal court defending rec'r on criminal charge	$75 00
Dec.	5.	To investigation of Hill & Rudd judgment, making motion in same, and in final settlement	100 00
1861.			
Feb.	18.	To services Mr. Cary at Madison	100 00
June	12.	To counsel for one year from June 12, 1860, to date	1,000 00
		To examination and settlement of claim of Judge Hubbell	25 00
		To services about Chamberlain's appeal	25 00
		To services in suits of Vliet *vs.* you, in justice and co. cts	50 00
July.		To services in municipal ct. defending conductor on charge of manslaughter	50 00
		To services in matter of petition for order to purchase cars	10 00
Aug.		To services preparing application for app't com'rs in place of Sterling, dec'd, notices, attendance at Madison mak'd app't to Supreme Court, and procuring app't of Alden com'rs	100 00
Oct.	17.	To services of preparing app't and giving notice for app't of com'ers to apprais da's for right of way from Portage to La Crosse,	

		and from Milwaukee to Horicon, attendance at Madison, mak'g app'n to Supreme Court, and procuring app't of such com'rs.	75 00
		To services in examining title to right of way not acquired between Horicon and Portage, pre'p app't to com'rs for appraisal, prep'g notice and papers for appraisal, and award of com'rs and superintending the same	250 00
	1862.		
417	March 20.	To services in suit of Chamberlain, city of Mil., and yourself	50 00
	March 20.	To services in 2d suit of Chamberlain, city of Mil., and yourself	50 00
		To services matter of appeals in Columbia co. and prep'g amend't to charter and avoid const'l question	50 00
	June 12.	To services counsel fee 1 year, June 12, '61, to date	1,000 00
		To services preparing case, brief, and argument in Sup. Ct., in appeal for order in Carney matter	250 00
	1863.		
	March 28.	To services in Mil. co. ct., in suit of Mariner *vs.* you	250 00
	June 12.	To services counsel fee 1 year from June 12, '64, to date	1,000 00
	July.	To services in co. ct. in su't of Kinney *vs.* you	150 00
		To services prep'g Mil. and ex. appeal and arg't Sup. Ct., do	150 00
		To services prep'g Mil. and ex. appeal and arg't Sup. Ct. Mariner *vs.* you	500 00
	1864.		
	June 12.	To services in settlement Bronstadt mortgage.	25 00
		To ex. and services about matter of taxes	100 00
			5,435 00

418 *Exhibit N N N.*

H. Crocker, receiver, in ac't with Cary & Pratt, for disbursements.

	1860.		
	July 16.	To cash p'd ex. Mr. P. to Madison, (Davis's matter)	$10 00
	July 21.	To cash p'd Mr. C. to Madison, (Davis's matter)	7 50
	" 31.	" " " " " " "	8 00
	Aug. 1.	To cash for app'l app't commissioners	3 25
	" 2.	" " " telegram	48
	Sept. 3.	" " " ex. Mr. C. to Madison in matter of habeas corpus	20 50

Nov.	1.	To cash p'd for copy record Carney suit	5 00
Dec.	10.	To cash costs continuance of suit Vliet *vs.* you	7 00
1861.			
Jan.	21.	To cash telegram to and from Doolittle	4 32
Feb.	18.	To cash p'd ex. Mr. C. to Madison to legislature	9 00
Feb.		To cash for printing Carney case and appeal	20 00
March	4.	To cash p'd copy aff'dts Carney matter	1 00
"	27.	To cash p'd costs motion " "	2 00
July	1.	To cash p'd telegram to and from Madison	1 12
"	3.	" " " " " "	1 12
"	9.	" " " ex. to Madison, argum't petition, appeal	10 90
"	23.	To cash p'd ex. to Madison, argum't Carney appeal	7 90
Aug.	10.	To cash p'd telegram, Carney matter	1 33
"	27.	To cash p'd printing brief matter	5 00
"	27.	To cash p'd printing petition	9 60
"	27.	To cash p'd printing case matter	47 00
"	27.	To cash p'd Argus and Dem. pub. notice app't com'rs	13 45
"	27.	To cash paid Mil. News, publ'g notice app't com'rs	13 45
Oct.	17.	To cash p'd ex. to Madison prep'g app't of commissioners	9 00
"	17.	To cash p'd pu 'l app't com'rs	21 15
"	17.	To cash p'd copy app't com'rs	4 50
Dec.	13.	To cash p'd copying opinion petition case	2 75
1863.			
May	26.	To cash paid record Hill & L. C. & M. R. R. Co.	2 50
June	12.	To cash p'd copy deposition in Mariner *vs.* you	7 50
1864.			
Jan.	4.	To cash p'd telegram to and from Madison	1 97
"	30.	To cash p'd ex. to Madison argument Mariner's appeal	11 50
June	8.	To cash p'd telegram do.	87
			270 66

Exhibit N N N. H. L. PALMER.

419 *Monthly balances of the ac's of Hans Crocker, rec'r, in the Wis. M. & Fire Ins. Co. Bank.*

1860.			
June	30.	Balance this date	$711 83
July	31.	Do	6,706 29
Aug.	31.	Do	6,647 13
Sept.	29.	Do	30,915 19
October	31.	Do	81,227 29
Nov.	30.	Do	102,172 06
Dec.	31.	Do	102,091 96

1861.			
January	31.	Do	105,335 66
Feb'y	28.	Do	101,531 05
March	30.	Do	64,952 45
May	1.	Do	66,266 82
June	1.	Do	118,237 51
July	1.	Do	124,297 14
August	1.	Do	96,067 48
Sept.	1.	Do	31,446 87
Oct.	1.	Do	22,874 58
Nov.	1.	Do	61,256 21
Dec.	1.	Do	57,121 85
1862.			
January	1.	Do	35,889 42
February	1.	Do	20,794 78
March	1.	Do	11,320 20
April	1.	Overdrawn, 11,964 04	
May	1.	Do. 21,865 05	
June	1.	Balance this date	15,571 99
July	1.	Do	37,847 86
August	1.	Do	21,407 90
Sept.	1.	Do	8,448 81
Oct.	1.	Do	65,917 27
Nov.	1.	Do	92,102 41
Dec.	1.	Do	114,036 71
1863.			
January	1.	Do	103,281 11
February	1.	Do	114,418 28
March	1.	Do	107,902 79
April	1.	Do	54,708 09
May	1.	Do	73,014 94
June	1.	Do	136,866 10
July	1.	Do	82,852 14
Aug.	1.	Do	51,665 99
Sept.	1.	Do	59,645 29
Oct.	1.	Do	50,378 16
Nov.	1.	Do	47,375 37
Dec.	1.	Do	15,406 40
1864.			
Jan.	1.	Do	17,228 17
Feb.	1.	Do	12,911 30
M'ch	1.	Do	10,661 72
Apr.	1.	Do	2,009 86
May	1.	Do	66,432 53
June	1.	Do	32,329 55
July	1.	Do	28,033 91
Aug.	1.	Do	27,720 26
Sept.	1.	Do	27,561 22

Exhibit O O O, presented by H. Crocker. H. L. PALMER.

420 The receiver shows to the auditor that, in addition to the sums shown in his account to have been paid, he has become liable—

1st. On a judgment recovered by N. H. Wood *et al.*, of Portage, against the receiver, for the sum of $1,438 61 in the circuit court of Milwaukee county, from which he has appealed to the Supreme Court, and given the usual security; also to a claim of Peter Roth, administrator of Matthias Schuk, for an accident in running the trains, by which said Schuk was killed, for which suit has been brought against the receiver in said circuit court, and damages are laid under the statute at $5,000; also to two other claims for accidents, by which John Maus was killed and Margaretta Shull was wounded, for which suits against the receiver are instituted; also to a claim for like accident, by which one of the employees of the receiver was killed, for which damages are claimed.

The receiver further prays that such other provision as may be just and reasonable be made to protect him against other outstanding liabilities which may arise or have arisen from his operating the road as receiver, and which are not yet ascertained.

Exhibit P P P. H. L. PALMER.

421 District court of the U. S. for the district of Wisconsin, in equity.

GREENE C. BRONSON AND JAMES T. SOUTTER
v.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Selah Chamberlain, Sebre Howard, the Milwaukee and Minnesota Railroad Company, and others.

MILLER, judge:

This is a bill in equity upon a mortgage or deed of trust of the La Crosse and Milwaukee Railroad Company to the complainants in trust for the holders of the bonds mentioned in it. The deed was executed on the 17th day of August, and the bonds bear date September 1st, 1857. The bonds are sealed with the seal of the corporation, signed by the president and secretary, and counter-

422 signed by the complainants as trustees, and are of one thousand dollars each, to the amount of one million, payable on the first of September, 1870, with interest at the rate of eight per cent., with coupons annexed, payable semi-annually at the Bank of the Republic, in the city of New York. The bonds are payable to the bearer thereof, and recite that they are for money borrowed by the company for the construction of their roads.

The deed conveys, in trust as security, all and singular the railroad of the company from the city of Milwaukee to Portage City, a distance of ninety-five miles, constructed and in full operation; and also the railroad of the company (as well that part which has been constructed as that part which remains to be constructed) from Watertown, by way of Columbus, to Midland, where it connects with the main line of the company's road, a distance of forty miles; and

it includes all the road-beds, rights of way, improvements and appurtenances, and all the property, real and personal, of the company to be acquired thereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of the company in respect to said railroads from Milwaukee to Portage City, and from Watertown to Midland, as fully as the same might be conveyed if said railroads had already been fully constructed and equipped. It is recited that the road from Milwaukee to Portage City is subject to a first mortgage on the same of nine hundred and fifty thousand dollars. That the first eighteen miles of said road is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles is subject to a second mortgage of two hundred thousand dollars. These two last-named mortgages are to indemnify the city of Milwaukee for advancing her bonds in aid of the company.

The charter of the company empowers them to borrow any sums of money from any persons or corporations at any rate of in-
423 terest which may be agreed upon, without regard to the laws on the subject of usury; and to make and deliver all necessary writings, notes, bonds, mortgages, or other papers and securities of such amount and kind as may be deemed expedient by the corporation in consideration of loans; and by an act approved March 14, 1856, the company is authorized and empowered in its corporate capacity to make and deliver its bonds or obligations, and the directors are authorized to prescribe by resolution the sum for which each of said bonds shall be issued, the time and place of payment of the principal and interest, the person or trustee to whom they shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest such bonds shall bear, and the manner and form in which the coupons annexed to them shall be executed. And to secure the payment of such bonds, the company is authorized and empowered in its corporate capacity to make and deliver a mortgage and deed of trust upon the whole or any part of its railroad constructed, or authorized to be constructed, and of all or any of their estate, real, personal, or mixed, in possession or expectancy. And the company is authorized and empowered by its agents or brokers, or otherwise, either in or out of this State to sell, loan, pledge, hypothecate, or otherwise dispose of any or all of said bonds authorized to be issued at par, or at any price less than par, and for such sum or sums, and on such terms, as to the said company or its agents or brokers shall appear most for the interest of the company; and by an act approved October 10, 1856, any railroad company may borrow such sum or sums of money at such rate of interest and upon such terms as the directors may authorize, and mortgage its property and franchises, and its road constructed or in process of construction.

The resolution of the board adopted August 8th, 1857, authorized the issuing of bonds to the amount of one million dollars, for
424 the purpose of carrying forward the legitimate work of the company. All of said bonds shall be expressed to be for

money borrowed for the construction of their roads, and shall be payable to the bearer thereof; said bonds shall be convertible into the capital stock of the company, estimating both the stock and bonds at par at any time within five years from the date thereof. And by another resolution of the board the president is authorized to sell and dispose of all or any portion of the bonds, and to sell them or any of them at the rate of eighty per cent. of their amount, payable half in cash and half in stock of the company at par, or upon such other terms as he may deem proper.

A notice signed by the president of the company, dated at their office in the city of New York, August 10, 1857, and published, represented that "the importance of completing the road this season to the junction of the western division, sixty-one miles from Portage City, by which we could not only control the coming winter's travel of the Upper Mississippi, but receive 300,000 acres of our land grant, has decided the board of directors to place before the stock and bond holders extraordinary inducements to furnish the means necessary to accomplish the object. The sum required to meet the engagements of the company and finish the road sixty-one miles beyond Portage is $400,000.

"To obtain this sum the company now offers to the holders of its stock and unsecured bonds, now so much depreciated in market, a new issue of one million of eight per cent. bonds, payable in 1870, secured by a deed of trust to Greene C. Bronson and James T. Soutter upon the eastern division of its road from Milwaukee to Portage City, (subject to the prior liens mentioned in the deeds,) and upon the line of road from Watertown to Midland, forty miles, which is subject to no prior lien.

"It was intended to issue this new loan exclusively to stockholders, receiving in payment four hundred dollars in stock of the
425 company, and four hundred dollars in cash for a bond of one thousand dollars; but it has been concluded to extend a like privilege to bondholders of *unsecured bonds* of the company which are outstanding, receiving such bonds with unpaid coupons, upon the same terms as the stock.

"The subscription will be paid, one-fourth of the cash payment at the time of making the subscription, the remainder with the stock or old bonds, to be surrendered either at the time of subscribing, or on the first day of September, when the new bonds will bear date and be ready for delivery.

"This will enable the holders of the bonds of the company, which have no security, and are now so much depreciated by adding a moderate amount in cash, to convert the whole into a mortgage, and bearing eight per cent. interest, amply secured against any contingency. As only about one-fourth of the amount of such unsecured bonds outstanding can be received in payment for the new bonds, those desiring to avail themselves of this offer will see the necessity of an early subscription.

"Annexed will be found a form of subscription which can be filled

up and returned by mail, *with a check* for the first instalment. Any subscriptions received after the loan is taken will be returned.

"Books are now open at this office.

"N. B.—To meet the views of those who have stock and would prefer to pay in bonds, it is understood that parties in this city will exchange bonds for stock."

From this circular and the testimony of Mr. Kilbourn, the president, it appears the object of making the issue of this million of dollars in bonds was to raise four hundred thousand dollars in cash; and he testifies that it was supposed this sum would be sufficient, when added to the other resources of the company, to secure the extension of the road to La Crosse. It was proposed to offer the bonds to the stockholders at 80 per cent., payable half in cash and half in the stock, or unsecured bonds of the company; by which means it was supposed 40 per cent. in cash would be realized, making the gross sum of $400,000.

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The bill charges that on or about the 26th day of September, 1857, the La Crosse and Milwaukee Railroad Company made a lease to Selah Chamberlain, and gave him exclusive possession of the road and property. And at that time the company was entirely and hopelessly bankrupt. It is also charged that Chamberlain did not pay the accruing interest on these bonds, which, according to his lease, he was bound to do. It is also claimed that the rolling stock was embraced in the deed or mortgage.

The defendants named in addition to the La Crosse and Milwaukee Railroad Company are proceeded against as subsequent incumbrancers, or purchasers, or otherwise.

Sebre Howard, one of these defendants, answers the bill, setting forth that on a note dated July 1, 1857, he obtained a judgment in the circuit court of Milwaukee county against the La Crosse and Milwaukee Railroad Company, on the first day of May, 1858, which was sued in this court and a judgment rendered in October, 1859. These facts appear on the record of the judgment and are conceded by stipulation filed. This answer states that at the time of issuing the bonds set forth in this bill the company was wholly insolvent, and that the deed and bonds were contrived and executed by the company, when the company was well known to its board of directors to be greatly embarrassed in its pecuniary affairs, for the corrupt and fraudulent purpose of disposing of the bonds, or a large portion of them, in payment of pretended debts to the officers and agents of the company or their friends, without consideration or in exchange for stock of the company then of little or no value, held by its officers and agents or their friends, and that in point of fact a large portion of said bonds were so disposed of and given away in violation of the charter, in fraud of its creditors, and of the defendant in particular; that two hundred of said bonds, being numbered from 651 to 825 inclusive, and from 851 to 875 inclusive, were delivered or given to Selah Chamberlain in pretended payment or satisfaction of a claim for services rendered the company, or for damages sustained by reason of the breaking up or surrender of a

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contract, which claim was wholly fictitious and was greatly overestimated, for the purpose of enabling him to receive the bonds, and the defendant insists that those bonds should be surrendered and cancelled; that one hundred of the bonds were given to Seth R. Foster as a security for a pretended indebtedness of the company, when the company was not indebted to him, and that these bonds were given to him without consideration, and fraudulently; that about fifty-five of the bonds were delivered to the complainant, James T. Soutter, either without any consideration or as collateral to, or in exchange for, bonds of the company theretofore issued corruptly and fraudulently and without authority by said company, known as "corruption bonds" or "Barstow bonds," and that Soutter gave no valuable consideration therefor; that the transfer of said bonds to him was fraudulent, and that they should be delivered up and cancelled; that fifteen of said bonds were delivered to Greene C. Bronson, the complainant, in exchange for stock of the company, which was nearly or altogether worthless, and that the company had no right to purchase from said Bronson said stock and pay for it with its money or bonds, and that the sale of said fifteen bonds was illegal and fraudulent, and that said bonds ought to be surrendered and cancelled; that about 600 of the bonds were disposed of at the nominal price of eighty
428 cents on the dollar, one-half in money and the other half in depreciated bonds or in the stock of the company, and that the company received for said 600 bonds only about one hundred and ninety thousand dollars in cash; that the company had no authority to dispose of those bonds upon these conditions, and that they should be surrendered and cancelled as fraudulent and void.

This defendant admits that the company on 27th Sept., 1857, made to Chamberlain the lease mentioned in the bill, and placed him in possession of the road and property, and by said lease he was to pay the interest on these bonds; that at that time the company was hopelessly insolvent as stated in the bill; that the company had no lawful right to make said lease; it was void in law, and was fraudulent and void as against the creditors of the company, being given and accepted for the purpose of carrying on the business of the company and to hinder and delay the creditors, and on the second day of October, 1857, the company confessed a judgment to Chamberlain in this court for $629,089 72 for the same purposes, design, and objects of the lease and to support the lease; and the said judgment is fraudulent and void.

This defendant states that Chamberlain has received the proceeds of the road under said lease, and has neglected to pay the interest accrued on these bonds, and that he has contrived with Prentice Dow, the agent of the complainants, to make the non-payment of the interest the ground for this action.

Sebre Howard being a creditor of the company at the date of the bonds and deed in suit with a judgment against the company in the circuit court, he is entitled to make defence to this bill. For this reason it is not necessary to refer to the answer of Graham & Scott,

as judgment creditors, which is a mere repetition of Howard's answer.

429 Upon the petitions of John S. Rockwell and A. Fleming, they were severally permitted to file answers in the name of the Milwaukee and Minnesota Railroad Company, defendant. It is proper for the court to make use of the testimony taken at the instance of Fleming in support of the answer filed by him, so far as the same sustains the answer of Sebre Howard. But it is to be understood that the court is not willing by any act to convey the impression that the mortgage to Barnes and the sale upon it, and the organization under said sale in the name of said company, are not to be considered open to judicial inquiry on the part of creditors and stockholders of the La Crosse and Milwaukee Railroad Company.

The terms of subscription for the bonds contained in the circular of the president conveyed the idea of the company's insolvency; and it also represented that the recital in the bonds, that they were issued for money borrowed to carry on the work, was not the whole truth. The proposition to sell the bonds at eighty per cent., one-half in money and the other half at par in stock and unsecured bonds, greatly depreciated, of the company then insolvent, was notice to purchasers that the company, in the desperation of its circumstances, was taking an undue advantage of the stockholders and general creditors who had no notice of the proposition. The bonds were thus offered and disposed of in the months of September, October, November, and December, 1857, at the time of great pecuniary revulsion and panic, and when excitement was occasioned in New York by the company having made an assignment by way of a lease of the road and confessed a very large judgment to Chamberlain. Under these circumstances a general scramble for the bonds ensued on the part of all who had an opportunity as trustee, agents, or brokers of the company, until its credit became entirely prostrate, and its object

430 in issuing the bonds was frustrated. Every man dealing in railroad securities in the city of New York could not avoid having notice of the extraordinary circumstances under which these bonds were being disposed of. It would be impossible to prove actual notice to them of the facts, but these being public securities offered by a company notoriously insolvent and bankrupt, and while a suit was pending in the city of New York to restrain the delivery of bonds of the company by the fiscal agent upon the alleged faithlessness of the directors, it is fair to presume that such dealers had such notice. The very liberal laws authorizing the company to dispose of bonds upon almost any terms does not authorize the disposition of them to agents and brokers and trustees to the prejudice of stockholders and creditors. Directors of an incorporated company are trustees of the stockholders, and are bound to them for their management of the trust estate; and the company's property is a fund to be honestly applied to its debts by the directors. From the evidence it does not appear that any large amount of bonds have passed from the first takers, and whatever have passed from them certainly did not at higher rates.

The bonds were not disposed of by the company in the ordinary transactions of business. The circular of the president was an application to stockholders and holders of depreciated bonds to contribute for their interest, and in aid of an insolvent company, and was notice to all persons that the bonds were depreciated and only worth the terms proposed.

Proof of the consideration of such bonds, and of the circumstances under which they were issued, should not be required to be as direct to purchasers of them, as in case of the purchase of the negotiable paper of an individual. Purchasers of corporation bonds always rely upon the facts known of the condition of the corporation, which regulate the prices in market, and they will naturally inquire into the cause of the depreciation of such securities.

430 It is contended on part of the complainants that the bonds being payable to bearer, are negotiable, and that no defence can be made to them. The object of the company in issuing them in that manner, with coupons annexed, was that they might be more available, and might command a better price in market. They are negotiable instruments, so far as they are made to pass by delivery, and give a good title to any person honestly acquiring them, and thereby enable the holders to sue in their own names. But being under seal, the bonds, if indorsed, would not enable the holder to charge the indorser by demand and notice, or protest as promissory notes or bills of exchange. They are not strictly negotiable instruments under the law merchant; but as sanctioned by trade, and in this instance as authorized by law, they pass from hand to hand, vesting a legal title in the holder. But whether corporation bonds purporting to be issued in aid of improvements, or of the object of the corporation, are of such a character as to cut off all defence as against *bona fide* holders, because they are payable to bearer, is not necessary to be decided in this case.

The La Crosse and Milwaukee Railroad Company make no defence. The creditors, made defendants, are left in their own behalf, and of others equally interested, to answer the bill and make defence.

This is a contest between bondholders, who claim the contents of their bonds to the full amount; and creditors equally meritorious who invoke the equitable interposition of the court for justice. With great confidence, I will advance this proposition: that if an insolvent corporation, in which its directors have little or no pecuniary interest, can issue bonds with a mortgage upon its property, and dispose of them in the manner these bonds were disposed of, and upon default in a suit in equity upon that mortgage, its general creditors should be precluded because the bonds were payable to bearer, the greatest injustice will be done; and no sane man will hereafter be a

431 stockholder or be a creditor of the company, unless by bond which he can immediately negotiate. A due regard to the administration of justice forces upon the court an inquiry into the consideration of the bonds included in the deed.

Mr. Dow testifies that he was transfer agent of the La Crosse and Milwaukee Railroad Company from July to October, 1857. That

the bonds were disposed of in the city of New York during the months of August, September, October, November, and December, 1857. They were proposed to be sold at 80 cents, one-half in cash, and one-half in stock, or unsecured bonds of the company. Subscriptions were made for the bonds to the amount of about 500,000 dollars; upon which there was paid about 165,000 dollars, and 40,000 dollars in notes of the contractor, stated by Mr. Kilbourn to be the same as cash. He does not know the precise amount of the stock, or the unsecured bonds received on these subscriptions; the books having been left with clerks, and he does not know what became of them.

One hundred of the mortgage bonds were paid to one S. R. Foster, upon a claim by him of deficiency of security for loans he had made the company upon pledge of its capital stock. Fifteen of the bonds were paid to Greene C. Bronson, one of the complainants, upon a claim by him of a large sum for legal services; he at the same time transferring 150 shares of the stock of the company.

Ten of the bonds were sold to Alfred Noxon, at forty-seven and one-half per cent. paid for partly in cash and partly in reduction of the notes of the company. Two hundred of the bonds were paid or sent to Selah Chamberlain, the contractor. Stephen H. Alden subscribed for 100 bonds, a part of the 500. He paid for them by four notes of Chamberlain, the contractor, amounting to $40,000, referred to above.

He also paid in cash about twenty thousand dollars; these
432 two payments, with allowance for interest, being $60,000. At the same time Kilbourn gave Alden a check for ten thousand dollars, which was a discount or allowance, reducing the price of the bonds to fifty per cent. of their par value. The other subscribers paid generally according to the terms of their subscription. The remaining bonds not delivered were handed over to Stephen Clarke, president of the company, in November, 1857. It appears in the evidence of Mr. Stanton, who succeeded Mr. Clarke as president, that there were eighty-nine bonds delivered to Clarke, of which he, Clarke, delivered sixty-five to Stanton, "which were disposed of, as directed by the board of directors of the company, by paying and appropriating the proceeds of those sold for the same purpose." He does not state how many of them were disposed of by him, or at what price, nor are we informed what Clarke did with the ten bonds he retained. D. E. Wheeler was a subscriber for a considerable number of the bonds at sundry times. He paid for them in cash, and stock. and other bonds, upon the same terms as other subscribers. Mr. Dow testifies that S. R. Foster subscribed for fifty of the bonds and paid for them forty per cent. in cash and forty per cent. in bonds of the La Crosse and Milwaukee Railroad Company, called or known as the St. Croix and Lake Superior railroad bonds. Foster loaned the La Crosse Company, as nearly as witness can remember, about ninety thousand dollars upon the pledge of three hundred thousand dollars of the stock of the company, and also 75,000 upon the pledge of another large amount of stock, 800,000 dollars or more. Some time afterwards Foster claimed that his security was insufficient, and Mr. Kilbourn gave him one hun-

dred of the second mortgage bonds as additional security; and the witness was informed that the company subsequently settled with Foster this loan, giving him forty thousand dollars in land grant bonds in full for his claim for deficiency.

Jackson Hadley was secretary of the company from April,
433 1857, to May, 1858. He testifies that the issue of the bonds was for the purpose of raising money to carry on the work. The bonds subscribed for were to be paid for at the rate of eighty per cent., payable forty per cent. in cash and forty per cent. in the stock or unsecured bonds of the company. Some bonds were hypothecated for money borrowed, some were delivered to Selah Chamberlain, some exchanged with Greene C. Bronson for stock, some withheld from the company by James T. Soutter, and some retained by Prentiss Dow. There were ten thousand dollars returned to Stephen H. Alden to reduce the amount of the bonds he bought to fifty per cent. All the issue of bonds were delivered to Mr. Soutter and Judge Bronson for their signatures as trustees. They signed them, and returned portions of them from time to time to the office of the company in New York city. All were returned except sixty-five, which Soutter refused to return or deliver to the company, alleging that he retained ten of them for services of himself and Judge Bronson as trustees, and fifty-five of them to secure the payment of certain unsecured bonds of the company, which he claimed that he had purchased some time previously for certain friends of his, who were, as he said, liable to be large losers by reason of the depreciation of the value of such unsecured bonds so purchased by him, and that he determined to hold these fifty-five bonds for their benefit.

Prentiss Dow was the chief clerk and financial agent of the company in New York at the time, and in that capacity negotiated for subscriptions for said bonds and received pay for them. Mr. Dow also proves the same, and that the money was paid to him or to the clerks in the office. When the first of the bonds were delivered the stock was selling in New York at twenty-seven cents. At the time the last was delivered it was down to five cents, as witness Hadley recollects. It was down to five cents within sixty days.

434 Mr. Hadley also testifies that in December, 1857, and in January, 1858, the Albany and eastern directors, then constituting a majority of the board, and composing the executive committee, or a majority of it, by resolution did cause to be executed and sold two million five hundred thousand dollars in unsecured convertible bonds, with coupons, bearing two per cent. interest, payable semi-annually. These bonds were to be converted into stock at the option of the holders thereof. They were ostensibly sold by a committee of the Albany directors at ten cents on the dollar, as accounted for to the company. They were immediately converted into stock in the New York and Albany office, and the stock sold at the brokers' board in New York city, in daily amounts, as the market would bear it, from eleven to fourteen cents. Twenty-five thousand shares of the stock were issued to Stephen Clark, president, to retire these two million five hundred thousand dollars of two per cent. convertible bonds. In

addition to the foregoing stock, the amount of stock hypothecated before that was, 1,500 shares with Alfred Noxon, 1,500 shares with Stephen H. Alden, and 7,800 shares with S. R. Foster.

Notwithstanding it was estimated that the four hundred thousand dollars would complete the road to La Crosse, it appears that these two and one-half millions of bonds converted into stock were issued about the same time one and one-half millions were added to the land grant mortgage. And it is in evidence that in June, 1858, the company issued bonds to the amount of two millions of dollars, payable at the Albany Exchange Bank, with interest at seven per cent., on the first days of January and July in each year, secured by a mortgage of the road to William Barnes, of Albany. And after default of the payment of the first six months' interest, William Barnes, the mortgagee, advertised and sold the road and bought it in, at the whole nominal amount of the mortgage, for the use of the bondholders, without objection on the part of the directors. And on the sale the Mil-
435 waukee and Minnesota Railroad Company was organized. This vast increase of the debt of the company, and this complication of its condition, no doubt tended to continue the depression of these bonds in the market.

Mr. Dow was removed from the office of transfer agent on account of difficulties with the old board, and he was appointed by the new board agent of the company for the settlement of claims some time in the winter of 1857–'8, and he held the appointment until March, 1858. He testifies that he has been the holder of second mortgage bonds of the company, having received thirteen of such bonds in September and October, 1857, from the company for the consideration of eleven thousand four hundred dollars paid to the company in other bonds of the company theretofore issued, in the capital stock of the company and in cash. He has also bought and sold many of said bonds in open market; buying for cash, or with notes of the purchasers, with the bonds as collateral security to them, at the current market price; and he has sold them in the same manner and upon like terms. The current market price varied from thirty per cent. to fifty-six per cent. of the par value of the bonds. His bonds have for the last two years been and are now in the hands and under the control of his son in New York, who has full power to dispose of them as he pleases. He had, on the first of January, 1861, eighteen of the second mortgage bonds. He does not know of any of the second mortgage bonds being fraudulently issued. As transfer agent, the care of transfers of stock was with him. He had duplicate keys of the safe in which the bonds were deposited as they came into the office from the hands of the trustees, by whom they were registered and countersigned. Generally over two hundred bonds at a time were in the office. The bonds were sometimes delivered by H. L. Richards, sometimes by Robert K. Dow, and sometimes by himself. He received of
436 the company two of the second mortgage bonds in September and eleven in October, 1857, for which he paid in cash $750; in capital stock of the company, fourteen shares of one hundred dollars each, $1,400; in the stock of the company, known as privileged

stock, issued with the land grant bonds, $250; in the bonds of the company theretofore issued for the purchase of the St. Croix and Lake Superior railroad, and in the land grant bonds, $5,000, making in all $11,400.

There is a mass of testimony of the same nature which need not be noticed. I have extracted this much for the purpose of ascertaining as nearly as possible what amount the company received for the million dollars in bonds, and what the purchase of them by the different persons really cost them; my object being to do, as nearly as possible, equal justice to the purchasers and the creditors of the company. It is regretted that the books of the transactions of Mr. Dow, agent and clerk of the company, were not in evidence, as from them it might possibly, with his explanations, be ascertained what each person actually paid, and what the stocks and unsecured bonds were actually worth at the different dates of delivery. The statement annexed to the deposition of Stanton is not reliable, as it wants authenticity, and nearly all the transactions bear date of the first of September, which is not correct according to the testimony. There is no reason for concluding, from the evidence, that the bonds rose in market after the first issue, but it may be fairly inferred that there was a great decline. There are no means of ascertaining the actual consideration of the fifty-five bonds Mr. Soutter retained. In September, 1858, William A. Guest, as chairman and vice-president of the company, gave him a receipt for fifty-five farm mortgage bonds and convertible bonds in lieu of the fifty-five bonds he retained; but what those bonds cost him or what he got for the bonds of the company does not appear. He and Judge Bronson were entitled to a reasonable compensation
437 for their services, and they retained twenty-five bonds for that and the stock returned. The eighty-nine bonds handed over to Mr. Clarke, may be supposed, were consumed by the board of directors, without much benefit to the creditors or stockholders. The transactions with Foster and Alden were extraordinary, and the amount realized by the company cannot be readily ascertained. Dow, the fiscal agent, paid but a small portion in cash for the thirteen bonds claimed by him, and he does not inform us what the stocks and bonds he paid were worth in the market at the time of his purchase of the bonds. Bonds of the St. Croix and Lake Superior Railroad Company were used in part by Dow and Foster in their purchase of the bonds.

On settlement with Mr. Alden, the president of the company considered these mortgage bonds worth fifty cents on the dollar. Mr. Chamberlain also estimated them at that rate, and so credited them. It is not probable that the company realized that amount out of the issue. Some of the first purchasers did not pay that amount; and it is certain that subsequent purchasers did not. As there is no way of identifying the bonds as they were sold or disposed of, except by the statement annexed to Mr. Stanton's deposition, which is not reliable, other than the bonds delivered to Chamberlain, and as an effort to trace out the real transactions connected with the different sales or transfers might consume time and expense unprofitably, and

as it is neither the interest of the bondholders nor of the creditors that this litigation should be prolonged, the master will be directed that the principal of the mortgage shall be stated at five hundred thousand dollars, and that he report the interest due and unpaid on that sum. If by possibility there should be holders of bonds who actually paid over that sum, the amount is made up to them by the receipt of three payments of interest on the whole amount.

438 As it regards the bonds delivered to Selah Chamberlain, which he credited on the allowance for damages at fifty per cent., it is not necessary now to determine whether the credit is properly made or not. He, it is understood, is a creditor of the company, and when the decree comes to be made, it may direct how the amount on his bonds may be applied.

The Milwaukee, Watertown and Baraboo Valley Railroad Company, defendant, by its attorney, filed an answer setting forth, that "it became the purchaser for a valuable consideration from the La Crosse and Milwaukee Railroad Company, in the month of December, 1857; that it is under no covenants or obligations to pay any part or portion of the debt to the complainants in trust; and that all the western division of the La Crosse and Milwaukee railroad, including that part of the road described in the trust deed, became the property of this defendant in virtue of such purchase. And it prays that the decree of this court may direct, that the portion of said mortgaged premises so purchased, and in the possession of this defendant, may be excluded and exempted from sale to satisfy said decree, until after all other parts or parcels of the mortgaged premises, or such parts thereof as may be necessary to satisfy such decree, be sold."

It appears that by a release of the La Crosse and Milwaukee Railroad Company, dated December 20, 1858, to this company, defendant, all liens and interests were released (except those mentioned,) which included the sum of $283,000 part of the mortgage in suit, which by the deed from the La Crosse Company of the 24th December, 1857, were to be paid, and to be considered a lien on the forty-two miles to Midland. As far as I see at present, it would be right to decree that portion of the mortgaged premises to be sold last, and not at all unless necessary to pay liens.

439 District court of the U. S. for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shephard Knapp,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. A. Helfenstein, trustee, and others.

MILLER, judge:

An act of Congress entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3d, 1856, granted to the State for the pur-

pose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in
440 width on each side of said roads, respectively. And it is provided that the lands shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and they shall be applied to no other purpose whatsoever; and that the lands granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other. And the act further directs that the lands shall be disposed of by said State only in this manner; that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold; and so on from time to time until said roads are completed.

By an act of the State legislature approved October 11, 1856, the lands granted to the State on the route to the west end of Lake Superior and to Bayfield, from Madison and Columbus, were granted to the La Crosse and Milwaukee Railroad Company upon the conditions mentioned. It is directed by this act that the roads from Madison and Columbus to Portage City shall be constructed, and completed by December, 1858. And it is provided that the lands shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever.

The act then provides that the title shall vest in the company in the same manner as by the act of Congress it shall vest in the State, and makes it the duty of the governor to give the certificates to the Secretary of the Interior, and to execute to the company a deed for the lands as it may become entitled to them. And it is provided that the company shall not sell any of the lands until twenty miles are completed, so as to admit of running regular trains over the
441 same; and so on from time to time, so that the sales of lands by the company shall never exceed six sections of land for every mile of road so completed. For the grant, the company is to pay into the State treasury four per cent. of the gross earnings. The company is authorized to mortgage, or pledge, or otherwise dispose of all their right, title, claim or demand of, in or to any lands, or interest in lands, granted the company by the act, and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

On the 11th of December, 1856, the board of directors of the company adopted resolutions to make a trust deed to the complainants, and to issue bonds to the amount of ten million dollars. On the 31st of the same month the company made its trust deed in the nature of a mortgage, in pursuance of those resolutions, whereby it did grant, bargain, sell and convey to these complainants all and singular the several tracts, pieces or parcels of land which are or may hereafter be or constitute the site of the road-ways, turnouts, engine-houses, depots, and all other lands constituting the roads of the company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse, and all the superstructure on said road. And all the locomotive engines and other rolling stock, and all equipments which have been or may be procured for or used on said roads or either of them, and all tools, &c., and other personal property which have been or may hereafter be procured, and all the rights, liberties, privileges, and franchises of said company of every kind and description relating to said roads. And also all the lands granted or intended to be granted to the company under or by virtue of the act of Congress and the act of the State legislature, so far as the lands pertain or are applicable to the construction of said roads from
442 Madison, by way of Portage City, to the St. Croix river or lake, estimated at one million of acres. The deed is intended to convey all present and future interest in the road and property and the lands.

Bonds were made of one thousand dollars each on different days, from the 1st of January to the 14th of July, 1857, to the number of twenty-five hundred, amounting to two and one-half million dollars. They were under seal, and payable to bearer in the city of New York on the first day of February, 1877, with interest, payable semi-annually, at the rate of seven per cent. per annum, and coupons annexed.

January 28th, 1858, the company, by its new board of directors, of which Stephen Clark was president, made an indenture or agreement with these complainants as trustees, in which, after reciting the former mortgage or trust deed and its contents, and reciting that twenty-five hundred bonds, amounting to two and one-half million dollars, had been issued, and for the most part negotiated, and the company being engaged in the construction and completion of that portion of the road between Portage City and La Crosse, with the necessary depots, stations, &c., and appurtenances, it will not be necessary to issue bonds under said deed or trust mortgage to an amount not exceeding, in the whole, more than four millions of dollars, including those already issued. In consideration of the premises, and for one dollar to the said company in hand paid, and in order to secure the bonds issued and to be issued within the amount of four millions of dollars, and to induce the future taking of said bonds, as well those issued as those to be issued, the company covenants, grants and agrees with these complainants by name, as trustees, that no more than four millions of bonds shall be issued. Similar provisions are then covenanted for as contained in the mortgage of December, 1856,

relating to taking possession and proceedings in case of default of payment, as well on the bonds issued as those to be issued. And the company further covenants that the lands owned by the company in La Crosse shall be appurtenant to the road. And, also, the
443 lands granted, so far as they pertain to the construction of that part of the road from Portage City westward to the junction at Tomah, being a distance of sixty-one miles from Portage Ctiy, embracing about three hundred and seven thousand two hundred acres, shall be by said trustees disposed of and applied, in the first instance, to the payment of whatever sums may be due or owing on the four millions according to the deed of trust, and the surplus shall be divided pro rata among the holders of such certificates as may be issued in connexion with the bonds, allowing the holders of privileged stock which has been issued in connexion with such bonds a proportion of the surplus. Then follows a form of such certificate.

The next day after the date of this agreement, January 29, 1858, there were issued four hundred bonds of one thousand dollars each, and one hundred bonds of five hundred dollars each, amounting to four hundred and fifty thousand dollars. February 12 there were issued 300 bonds of one thousand dollars. February 15 there were issued 150 bonds of one thousand dollars each; and February 16, two hundred bonds of one thousand dollars each, amounting in the aggregate to one million five hundred thousand dollars, and which, with the bonds issued, make four millions. They were under seal, and payable to bearer in the city of New York, the same as the first bonds.

J. Albert Helfenstein, who is a party defendant, answers that the company, on the 26th day of September, 1857, did execute and deliver to him a mortgage or trust deed as trustee, (reciting, for the purpose of constructing their road from Madison to Prescott, at the mouth of the St. Croix river or lake, on the Mississippi river and putting it in order, the company agreed to borrow one million of dollars and to issue its bonds therefor,) of all their lands which constituted or might constitute or be a part of the roads from Madison, by way of Portage City, to Prescott, and from Portage City to La Crosse, and all the road, &c., whether then made or to be made, and all the appurtenances,
445 and the locomotives and rolling stock and that to be acquired, and all the franchises, and also several tracks of land in Pierce county, in this State. And also, on the 2d day of October, the company made its bonds under seal, payable to the bearer on the 1st day of October, 1860, at the rate of eight per cent., in New York; and the bonds issued amounted to three hundred and sixty-eight thousand five hundred dollars. The last date of their issue was December 17, 1857.

He claims that, in case of a decree of sale on the bill, the part of the premises not covered by this mortgage may be decreed to be first sold; and in case of sale of that portion of the premises covered by his mortgage, the proceeds of sale may be applied to his mortgage. And he claims a preference to the fifteen hundred bonds issued on and after January 29, 1858.

An amended answer of Mr. Helfenstein states that at the time the

trust deed mentioned in thebill was made, no part of the line of the road from Madison by way of Portage City to the St. Croix river or lake, and from Portage City to La Crosse, had been constructed, nor in existence, nor in process of construction, nor had the company acquired the right of any, nor did the company then own the land now occupied by the line of road, and on which so much of the road as extends from Portage City to La Crosse has since been constructed, and that the said deed is not a lien upon the said line of road.

And it is alleged, that of the issue of bonds under the complainants' trust deed, only nineteen hundred and ninety one bonds, amounting to nineteen hundred and ninety-one thousand dollars, were actually issued and disposed of by the company prior to the execution and delivery of his deed and bonds; and that the remainder of the four millions were issued and disposed of after.

Mr. Helfenstein's mortgage does not cover the land grant.

On the day of the date of this mortgage the company made a lease of their road from Milwaukee to La Crosse, and of rolling
446 stock, to Selah Chamberlain, and put him in possession. And on the second day of October, 1857, the same date of the bonds issued under this mortgage, the company confessed a judgment in this court in favor of Chamberlain for an amount of over six hundred thousand dollars.

The company, under the complainants' mortgage, made bonds to the number of twenty-five hundred, at several times, commencing in January, 1857, and running through the months of February, March, April, May, June, and to the fourteenth of July, and issued all but five hundred and nine before the twenty-ninth day of January, 1858. The same board that made the mortgage and those bonds made the lease and confessed judgment to Chamberlain.

In the month of November, 1857, the board of directors was changed by electing a majority of members residing east. On the 28th January, 1858, the board made the agreement above recited, whereby bonds were to be isssued under the mortgage to complainants, to an amount not exceeding four millions of dollars, including those already issued. This was an attempt to increase the amount then issued under the mortgage one million and a half of dollars. The company ceased making and issuing bonds in the month of July, 1857, and in August made a second mortgage of one million of dollars on the road to Portage City, and in the month of September made the mortgage to Helfenstein. From these facts it is fairly inferable that all intention of making and issuing more bonds under the mortgage in suit had been abandoned. It is not to be presumed that the company intended a fraud upon the holders of the Helfenstein mortgage bonds, by delaying the making and issuing of bonds under this mortgage, with the intention of resuming after the bonds under the Helfenstein mortgage were disposed of. The lease to Chamberlain was similar in legal effect, as to bankruptcy, as an assignment of an insolvent debtor for the payment of debts. It put an end to the works and operations of the company in its own name, and it was a sur-
447 render of the works into Chamberlain's hands, and an abandonment of the extension by the company of the work on the

line of the land grant road. I cannot have a doubt but that the fifteen hundred bonds, as a lien on the road, should be postponed to Helfenstein's mortgage. After the delay in issuing bonds from July, 1857, to January 29th, 1858, under the first mortgage, it should be considered in the light of a mortgage to secure advances, where, as to intervening liens, advances are to be held as new mortgages, and are liens only from their respective dates.

By the amended answer of Helfenstein, objection is made that the mortgage in suit is not a lien on the road, as work on the line of the road had not been commenced on the day of its date. I think some work had been commenced. By the act of the legislature granting the lands to this company, authority is given the company to "mortgage all their claim, right, title or demand of, in, or to any lands granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper." This statute authority disposes of the objection to the want of title, both as to the lands on which the road was located and made and to the lands granted by government. The company could mortgage lands and property to be acquired, and if acquired afterwards the lien attached. And without the act, I think there can be no doubt of the principle of equity that where a mortgage was made of an estate to which the mortgagor had not at the time good title, yet having afterwards acquired one, it would inure to the benefit of the mortgage. Courts of equity will support mortgages fairly entered into, of things and estates which have no present existence, and the lien will adhere to the property when acquired by the mortgagor. Whatever interest the company has acquired or has a right to acquire in the road and property appurtenant thereto, and in the lands covered by the road, and also in the lands granted by
448 government according to the conditions of the grant, they are covered by complainants' mortgage.

In the amended answer of Helfenstein it is averred, that the last issue of bonds under this mortgage was made to directors in fraud of the stock and bondholders, and that the fifteen hundred bonds were sold at thirty cents on the dollar. This being a controversy involving their rights, (the company making default,) several holders of bonds of the first issue under this mortgage petitioned the court for leave to become parties; and on an order that the bill be amended making them parties defendant, their answers were filed. In those answers they deny that the company has issued any bonds under this deed to a greater amount than two million five hundred thousand dollars, in bonds of one thousand dollars each, and numbered from one to two thousand five hundred inclusive. The answers allege it is not true that, at the time of the execution of the deed on the 28th January, 1858, the company was engaged in the construction and completion of that portion of the road between Portage City and La Crosse; nor is it true that any of the bonds, amounting to one and one-half millions of dollars, issued after the 28th January, 1858, were is-

sued or the avails used in constructing or completing any part of the road between Portage City and Tomah, called the junction, or any part of the road called the land grant road; but the entire road from Portage City to Tomah was complete and paid for by the two and a half millions of bonds and their avails; and the last bonds were issued for the purpose of constructing the road from Tomah to La Crosse; and that they were issued in violation of acts granting the land, and of the deed of trust, and without the knowledge of the first bondholders.

The answers also set forth the mortgage to Helfenstein, and the insolvency of the company, and the lease to Chamberlain of the entire road and rolling stock of the company, and his possessions under it;
and that the company having parted with its property and
449 ceased control of it, the subsequent issue of bonds was a fraud upon bondholders and creditors. The answers also state, that only four hundred and fifty thousand dollars were realized out of the issue of fifteen hundred bonds, which were surreptitiously obtained and taken by certain directors, who sold the same and agreed to account and only accounted at the rate of thirty cents on the dollar, who sold them at a greater price; and that the price of $450,000 for completing the road was extravagant; that the same was not worth more than $200,000; and that the whole transaction was a fraudulent collusion between directors and contractors; and that all the facts relating to said company here set forth were known to every person interested in or dealing in the securities of the company. And the answers pray that the holders of the last issue should not be put on an equality with them.

By the instrument under which the fifteen hundred bonds were issued, the remedies granted to the mortgagees by the first mortgage are changed in some particulars. The land is converted from a primary to a secondary fund, and the roads between Madison and Portage City and between St. Croix and Tomah were abandoned, which destroyed the lien on the land grant as to these bonds except between Portage City and Tomah. By this, it would appear that the completion of the land grant road was abandoned. And if the road had then been completed to Tomah, it in fact appropriated the proceeds of the fifteen hundred bonds to the completion of the road from Tomah to La Crosse.

By an agreement between Vose, Livingston & Co., and Stephen Clark, the president, on behalf of the company, dated January 28, 1858, the company was to make the agreement above referred to, of that date; and the company agrees to procure Selah Chamberlain to so modify his lease that the net revenues of the road from Portage City to La Crosse shall be applied in the first instance to the payment of the interest on the four millions issued and to be issued.
The company agreed to stop the issue of bonds on previous
450 mortgages named, and they agreed to procure an agreement from Chamberlain that the judgment of Chamberlain shll be subsequent in lien to the four million of land grant bonds. The company shall pay punctually the interest due the first of February,

1858, on the land grant bonds held by Vose, Livingston & Co., and all others outstanding, Vose, Livingson and Co. agreeing that upon the compliance of these agreements they will discontinue the suit pending, restraining the issue of land grant bonds, provided that the fifteen hundred bonds be applied to the completion of the road to La Crosse by Chamberlain for the said bonds.

And by an agreement of the same date, between the company and Vose, Livingston & Co., and Alfred Noxon, Seth R. Foster, and John H. Reynolds, which recites that Chamberlain has contracted to complete the road from the junction to La Crosse, a distance of fifty-four miles, and to receive in payment therefor fifteen hundred bonds of one thousand dollars each, of the company, issued under the mortgage of December 31, 1856, as modified by an instrument of this date; and as the party of the second part have guaranteed the performance of such contract, and the said 1,500 bonds have been delivered to Chamberlain, and as Vose, Livingston & Co. are holders of a large amount of the land grant bonds heretofore issued, and having an injunction restraining the further issue of bonds upon the ground of apprehended improvidence and misuse in the application of them, or their proceeds, have consented to the dissolution of the injunction, it is agreed that the 1,500 bonds be deposited by Chamberlain with Joseph M. Lovett, cashier of the Albany Exchange Bank, in trust as security for the performance of his contract for completing the road from the junction to La Crosse. The bonds are to be parted with to Chamberlain as he progresses with the work. But if Chamberlain and the parties interested in said bonds shall desire to make sale of them prior to the time when they would be deliverable, such sale may be made, provided the price shall not be less than thirty
451 per cent. of their par value; and that the money shall be received and held by Lovett upon the same trusts as the bonds. And when there shall have been provided in all four hundred and fifty thousand dollars subject to be drawn by Chamberlain, as his contract is completed, the balance of such proceeds shall stand in the hands of Lovett to the credit of Noxon, Foster, and Reynolds, parties of the second part, subject to be drawn for in like proportionate instalments. And if all the bonds be sold, the last portion standing to the credit of the parties of the second part may be withdrawn at the expiration of sixty days from the time the last sale shall have been completed. By a previous agreement between Chamberlain and the company, dated January 2, 1858, Chamberlain agrees that, upon receiving land grant bonds and privileged stock to the amount of one million five hundred thousand dollars each, he will deposit all the said stock and bonds in the Albany Exchange Bank as security. That Noxon, Foster, and Reynolds are agreed upon as a committee to negotiate said bonds and privileged stock at a price not less than thirty per cent. upon the par value of said bonds, and they are authorized and required to sell and negotiate them as soon as practicable for the purpose of completing the road under the contract of January 1, 1858. A certificate of stock, amounting to $1,000, is to be annexed to each bond.

It is shown by these agreements that the contract with Chamber-

lain was to build the road from Tomah to La Crosse; that the committee, named as sureties for the completion of the work, took control of the bonds with certificates of stock annexed, out of which they were to realize for Chamberlain four hundred and fifty thousand dollars for his compensation; and Vose, Livingston & Co. consented to this arrangement and withdrew their injunction.

And on the 28th of January, 1858, Selah Chamberlain, in writing, modified his lease, so that the revenues of the road should first be applied to the interest on the four million dollars in bonds.

452 Chamberlain testifies that his contract, dated January 1, 1858, was to finish the road from the junction to La Crosse for fifteen hundred land grant bonds of $1,000 each, to be issued, and which were issued. He had an agreement with the committee that he should receive four hundred and fifty thousand dollars for finishing the road between those points. He gave receipts for the bonds, but they did not come to his hands. Clarke and Noxon came to Milwaukee in March, 1858, and informed him that Vose, Livingston & Co. were about getting out an injunction to restrain the selling of the bonds, and they procured a receipt for them, promising to pay him thirty per cent. The receipt is for one million and one-half in bonds in full of contract.

By the testimony of Mr. Dow, the transfer agent, five hundred and ninety thousand of the first issue of land grant bonds were delivered by him to Stephen Clarke, the president, in November, 1857, and were paid out during January and February, 1858. The last issue were numbered from 2500 up to 4000.

Charles A. Meigs, a broker in New York, testifies that in the month of February, 1858, the land grant bonds sold from 34 to 41 per cent. In March from 35 to 39; in April from 30½ to 35; in May from *from* 31 to 34; in June from 30 to 33. He sold bonds of this description for Alfred Noxon. The bonds were sold to persons residing over the country. No distinction was made as to the numbers. They were regarded as standing alike. These bonds were sold for Noxon and Foster, from February to May, 1858, to the amount of $323,000, beginning at 40 cents and running down to 33¾ cents. And in April he bought for account of Noxon $30,000, at 31½ to 33 cents.

George H. Broadhead was a member of the board of brokers in New York. The land grant bonds sold from the 1st October, 1857, to the 31st July, 1858, at from twenty to fifty cents on a dollar. The sale at twenty cents was on the seventh day of November, 1857. The sale at fifty cents was on the 26th day of January, 1858.

453 The average price was about thirty-five cents; and from July to December they sold as low as thirty cents. The highest after that time was in January, 1858, when they sold from thirty to fifty cents, and in February at thirty-five to forty-two cents.

Seth R. Foster testifies that he was a director of the company; Stephen Clark was present; D. E. Wheeler, Alfred Noxon, George W. Luther, and D. Radcliff were directors, residing in the State of New York. He cannot tell to whom the bonds were delivered, but his impression is that they were delivered to Alfred Noxon and him-

self; cannot tell whether any of the bonds were delivered to Mr. Lovett. He does not give any facts more definitely, his memory having failed him.

Alfred Noxon does not know whether the company was insolvent or not in the month of January, 1858. He took four or five hundred of the bonds from the trustees after they were signed, but he does not know who took the balance. He thinks he delivered the bonds to Mr. Clark, but if not to Clark, then to Mr. Dow, or some other officer of the company; it is impossible to state to whom. They were between numbers 2500 and 4000; does not know of bonds numbered from 2500 to 4000 being deposited with the Albany Exchange Bank. He received those bonds of the trustees in February and March, 1858. He sold between two and three hundred thousand dollars of them, but does not recollect their numbers; cannot say that the amount was greater; it could not have exceeded five hundred thousand; they were sold through brokers at different times. He has only the brokers' account of sales. He kept no account; and if the brokers' account is in existence, it is in Crescent, New York. The account was not rendered to the company. The proceeds of sales were deposited in the Albany Exchange Bank, in Albany. Seth R. Foster had handled and sold, perhaps, half a million of the bonds. All the general books of the company were taken to Albany. The meetings
454 of the directors and other business of the company were transacted there. He does not know where the books are. He does not know that Foster accounted for the bonds. Chamberlain's order for the bonds was given witness in the winter or spring of 1858.

It is proven that Vose, Livingston & Co., being holders of nearly a million in dollars of the first issue, brought a suit in chancery in New York against the complainants in this suit, Prentiss Dow, and the company to restrain them from signing, negotiating, pledging, or in any manner disposing of the bonds secured by the morgtage of December, 1856, to the amount of $484,000. The suit was commenced in September, 1857. A temporary injunction was issued, and it continued in force until January 28, 1858, when by stipulation the suit was discontinued and the injunction dissolved. This was on the modification of the mortgage as a condition, and also on a modification of the lease by Chamberlain, and upon his agreeing to give the bonds to be issued a priority to his judgment.

The bill in that case charges false representation of officers of the company, the lease and judgment to Chamberlain, and the insolvency of the company. And that the officers of the company have heretofore so misapplied the said bonds and their proceeds, and so manifested their untrustworthiness, as that the security of the plaintiffs and the other *bona fide* holders of the bonds secured by said mortgage requires that the company and its officers shall no longer be trusted with the disposition of those bonds which have not been sold or absolutely disposed of. The bill prays a perpetual injunction.

Vose, Livingston & Co. accepted for iron sold near one thousand of the bonds first issued under this mortgage at 80 cents on the dol-

lar, with the privilege of subscribing to stock in the company to the amount of five hundred dollars to each bond, subject only to
455 paying five dollars on a share when subscribing, and no further assessment to be called for until the road is completed and the land is exhausted in liquidation of the bonds. And it seems that the last issue of bonds had annexed to each bond a certificate of preferred stock to the amount of one thousand dollars. These certificates of stock were annexed, no doubt, with a view of giving the bonds some buoyancy in the market.

It is objected that the second issue or 1,500 bonds were authorized by the board in the city of Albany, New York, and not in Milwaukee, and that for this reason the bonds should not be adjudged legal obligations. It appears that the seal of the company was carried off, from Milwaukee to Albany, and a bond and stock machine was run there under systematic efforts of the directors to increase the debt of the company at the rate of one thousand dollars for one hundred realized by them. But the bonds representing on their face to have been legally issued, and in the form of those of the previous issue, this objection cannot be made after they passed from the company. Persons purchasing the bonds were not bound to look further than to the representations on their face and to the mortgage.

This brings me to the point raised, that the fifteen hundred bonds were not applied to the land grant road, but were applied to building the road from Tomah to La Crosse.

The supplemental agreement of January 28th, 1858, under which the last issue of bonds was made, provided that the entire proceeds of the sales of the lands granted to the State, so far as they pertain to, or shall be derived from the construction of, that portion of the road from Portage City to the junction at Tomah, shall be by the trustees disposed of, and applied in the first instance to the payment of what may be owing on the four millions of bonds in accordance with the provisions of the original deed. From the proof there can be no doubt but that thirty per cent. of the fifteen hundred
456 bonds was applied to the building the road by Chamberlain from Tomah to La Crosse. This was a misapplication of money raised on the credit of the land grant, against the direct prohibition of the act, as that portion of road is not on the line of road designated in the grant. But upon the face of the bonds and the provisions of the original deed of trust and the supplement, were the purchasers of the bonds obliged to look to the application of the funds? I think they were not. I am, at present, of opinion that these bonds will be entitled upon the distribution of the proceeds of sale of the land grant, after the twenty-five hundred bonds, to be paid the proceeds of the sale of the portion of bonds for building the road from Portage City to Tomah. But this will be more maturely considered when the decree comes to be made.

There are no objections to a full allowance on nineteen hundred and ninety-one bonds of the first issue. They were disposed of by the company at eighty cents and less. The pleadings do not object to an allowance at par, or require the judgment of the court upon the

question. Five hundred and nine bonds, the remainder of the twenty-five hundred, were in the hands of Mr. Clark, the president, and not disposed of until the injunction was removed on the 28th of January, 1858. From the proof in this case it would not be conscientious to allow those five hundred and nine bonds to be paid in full. There is no account of what became of them, or what were they sold for. I think there is evidence sufficient to justify the court in reducing the amounts to be allowed on these bonds and on the second issue, in justice to the creditors.

I need not repeat here what is said in the opinion just delivered, as to the rights of holders of bonds of this description. The company was notoriously bankrupt, and its assignment by way of lease of its road and rolling stock to a preferred creditor for an unlimited time created an excitement in the city of New York, the mar-
457 ket for the bonds; and the total loss of credit of the company and of confidence in the integrity of the directors, until an injunction was procured in the same city to restrain the further issuing of bonds, and that those bonds were not issued until the injunction was removed, and then only with certificates for surplus proceeds of sales of the lands, and for stock of equal nominal amount with each bond annexed, are sufficient facts to authorize the court to conclude that purchasers of the bonds cannot be *bona fide* holders for a valuable consideration. The bonds were offered in market and disposed of and purchased as depressed securities. They were sold and were bought as such, no doubt by speculators knowing the unusual and desperate circumstances under which they were brought forth.

By allowing forty per cent. on the five hundred and nine bonds, and the same amount on the one million five hundred thousand dollars of bonds, I think full justice will be done the parties. A small portion if any of the bonds were sold after the 28th of January, 1858, for a greater price, with the certificates annexed, which were considered of some value. The average price was thirty-five cents. By allowing forty per cent. the purchasers cannot lose, and the company did not receive that much.

In regard to the amount to be allowed on the bonds in the Helfenstein mortgage, which was made on the same day as the lease to Chamberlain, it seems that the court is not called upon to adjudicate. That subject has not been specially presented, and it probably was intended to be left for disposition at the distribution of the proceeds of sale. It is not at all probable that they are entitled to more favorable consideration than the bonds above disposed of. As the several tracts of lands described in the mortgage, and not connected with the land grant or the railroad track, are the primary fund for the payment of those bonds, and the only fund if the sale of the road should be ne-
458 cessary, after the sale of the land grant, to satisfy the land grant mortgage, it may be immaterial at what rate they are estimated.

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their roads, and procuring rolling stock.

The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land grant bonds and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors. And I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its fran-
459 chises by making mortgages of several parcels of the road and property. That would be creating several corporations by deed of a company to which the legislature granted but one.

Judgments that may be recognized by the court as liens will be entitled to a share of the proceeds of the sales, according to their relative priorities with mortgages.

So far as I have progressed with these cases, a steady and single effort has been made to do equal justice to all the parties, as nearly as their extraordinary character and implications would allow. Avoiding technicalities as much as possible, I have endeavored to take such a view of the whole matter as to approximate as nearly as possible to equal justice to all concerned.

Exhibit Q Q Q.

H. L. PALMER, *Auditor.*

460 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 25th day of April, in the year of our Lord one

thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

Exhibit R R R, filed April 28, 1865.

H. L. PALMER.

461 *Exhibit No. R R R.—Order of June* 12, 1863, *in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Shepherd Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St.

462 Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box-cars mentioned and described in the decree; and also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

463 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be sustained, and the persons who purchased the company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land grant bonds and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors. And I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its fran-
459 chises by making mortgages of several parcels of the road and property. That would be creating several corporations by deed of a company to which the legislature granted but one.

Judgments that may be recognized by the court as liens will be entitled to a share of the proceeds of the sales, according to their relative priorities with mortgages.

So far as I have progressed with these cases, a steady and single effort has been made to do equal justice to all the parties, as nearly as their extraordinary character and implications would allow. Avoiding technicalities as much as possible, I have endeavored to take such a view of the whole matter as to approximate as nearly as possible to equal justice to all concerned.

Exhibit Q Q Q.

H. L. PALMER, *Auditor.*

460 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 25th day of April, in the year of our Lord one

thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

Exhibit R R R, filed April 28, 1865.

H. L. PALMER.

461 *Exhibit No. R R R.—Order of June* 12, 1863, *in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Shepherd Knapp, trustees, *vs.* LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, *et als.* } In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between
462 the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points, and the forty box-cars mentioned and described in the decree; and also the share or proportion of the rolling stock and personal property purchased by the receiver as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

463 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twentieth day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk*,
By JAMES McFARLIN, *Deputy*.

464 THE UNITED STATES OF AMERICA, *District of Wisconsin:*

District court of the United States of America for the district of Wisconsin.

Pleas before the honorable Andrew J. Miller, judge of the district court of the United States for the district of Wisconsin.

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } No. 25, January term, 1856.

August 28, 1855.—This day came the plaintiff by his attorneys, Messrs. Finches, Lynde, and Palmer, and filed his præcipe for a summons in a plea of breach of covenant, damages $300,000. Whereupon a summons issued, returnable the first Monday of October next.

Summons returned:

Served personally by showing the original and delivering a copy of the within to the secretary of the La Crosse and Milwaukee Railroad Company August 28th, 1855.

S. V. R. ABLEMAN, *Marshal*,
By C. C. COTTON, *Deputy*.

Fees, $2 32.

January 5, 1856.—This day came the plaintiff by his attorneys, and filed his declaration.

January 9, 1856.—This day came the defendant by his counsel, and on his motion it is ordered by the court that the time for the said defendant to plead be and is hereby extended until the first day of February next.

April 3, 1856.—This day came the plaintiff by his attorneys, and the rule on the defendant to plead not being complied with, its default is now here entered by the clerk.

April 7, 1856.—This day came the defendant by its attorney, Mr. Strong, and filed its plea and demurred.

April 7, 1856.—This day came the defendant and moved the court to set aside the default entered in this cause for reasons filed.

April 8, 1856.—This day the motion of the defendant to set aside the default entered in this cause came on to be heard and was argued by counsel, on consideration whereof it is ordered by the court that the said default be, and is hereby, set aside.

May 5, 1856.—This day came the plaintiff by his counsel, and moved the court to strike out twenty-one of the pleas filed by the

defendant in this cause, to wit, all after the plea of *non est factum*, for reasons filed.

May 7, 1856.—This day the motion of the plaintiff to strike off twenty-one of the pleas filed by the defendant in this cause came on to be heard and was argued by counsel, and the court not being sufficiently advised of and concerning the same, took time to consider.

May 9, 1856.—This day, on consideration of the motion of the plaintiff to strike off plea of the defendant and of the argument of counsel therein, it is ordered by the court that said motion be, and is hereby, overruled.

June 9, 1856.—This day came the defendant, by its counsel, and on their motion it is ordered by the court that the plaintiff reply to the defendant's pleas herein, by the first Monday of July next.

July 7, 1856.—This day came the plaintiff by his counsel,
465 and on his motion it is ordered by the court that the time for the plaintiff to reply to the defendant's pleas be, and is hereby, extended to ten days.

August 4, 1856, this day came the plaintiff, by his counsel, and moved the court to strike off from the record in this cause the demurrer of the defendant pleaded for reasons filed, and came the plaintiff, by his attorneys, and filed his demurer.

August 4, 1856, this day came the plaintiff, by his counsel, and moved the court to strike off from the record in this cause the demurrer of the defendant pleaded for reasons filed.

August 6, 1856, joinder in demurrer filed by the defendant.

August 7, 1856, this day the demurrer of the plaintiff to the defendant's pleas came on to be heard and was argued by counsel, and the court, not being sufficiently advised of and concerning the same, took time to consider.

November 10, 1858, this day came the plaintiff, by his counsel, and on his motion and affidavits filed it is ordered by the court that he have leave to withdraw the declaration herein filed, and to file an amended declaration in lieu thereof, on the payment by the plaintiff of the costs of the demurrer to the defendant's pleas; and on the further motion, it is ordered that the defendant plead to the plaintiff's amended declaration this day filed by the first Monday of December next, or its default will be entered.

December 1, 1856, this day came the plaintiff, by his counsel, and on his motion it is ordered by the court that the defendant plead to the plaintiff's declaration on file instanter, or its default will be entered.

December 5, 1856, this day came the defendant, by its attorneys, and filed its pleas.

January 25, 1857, this day came the plaintiff, by his attorney, and filed his demurrer and replication.

January 28, 1857, depositions received from J. P. C. Cottril, esq., U. S. com'r, and filed.

April 5, 1857, this day came the defendants, by their attorney, and filed their rejoinder and joinder in demurrer.

April 27, 1857, this day the demurrer of the plaintiff to the several

special pleas of the defendant came on to be heard, and the argument of counsel not being concluded, the further argument was continued until to-morrow.

April 28, 1857, this day came the parties, by their counsel, and the argument of the demurrer to the defendant's pleas was concluded, and the court not being sufficiently of and concerning the same, took time to consider.

May 6, 1857, this day came the parties, by their counsel, and the court, on due consideration of the demurrer of the plaintiff to the several pleas of the defendant, doth now here order and adjudge that the said demurrer be sustained, and that the second, third, eighth, ninth, eighteenth, nineteenth, thirty-fourth, thirty-eighth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth and fifty-sixth pleas of the said defendant, and the matter contained therein, in the manner and form as the same are pleaded and set forth, are not sufficient in law to bar or
466 preclude the said plaintiff from having his action thereof against the said defendant, and that the said plaintiff is not bound by law to answer the same.

August 22, 1857, deposition received from post office and filed.

September 8, 1857, this day came the parties, by their counsel, and by consent, and upon affidavits filed, it is ordered by the court that this cause be, and is hereby, set down for trial on the third Monday of September instant.

September 29, 1857, deposition received from post office and filed.

September 29, 1857, this day came the parties, by their counsel, and the several issues herein joined came on to be tried; whereupon a jury was called to try the same, who came, to wit: George Bingham, Joel Wilcox, Robert R. Carnock, John Everts, Kellogg Sexton, Andrew Mitchell, John Story, Charles A. Hastings, Hiram Merrill, Enoch Chase, Edward O'Neil, and William Antill, twelve free, honest, and lawful men of the district, who were severally impanelled and sworn by the court, and the trial not being concluded, the same was adjourned until to-morrow morning.

September 30, 1857, this day came the parties, by their counsel, and the further trial of the several issues herein was resumed, and not being concluded, the further trial was adjourned until to-morrow morning.

October 1, 1857, this day came the parties, by their counsel, and the trial of the several issues herein was resumed, and not being concluded, the further trial was adjourned until to-morrow morning.

October 2, 1857, this day came the parties by their counsel, and the trial of the several issues herein was resumed, and not being concluded the further trial was adjourned until to- morning.

October 3, 1857, this day came the defendant, by its counsel, and here in open court, by leave of the court first had and obtained, withdrew all claim to recoup any damages in this cause against the plaintiff without prejudice to its rights to recover the same in any cross action. And the further trial of the several remaining issues was resumed, and the said jurors of the jury aforesaid being charged by

the court, on their oaths do say that they find the several remaining issues in favor of the plaintiff, and do assess the damages to the said plaintiff at the sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents.

October 7, 1857, this day came the plaintiff, by his counsel, and on his motion it is considered and adjudged by this court now here, that the said plaintiff do have and recover of the said defendant, the La Crosse and Milwaukee Railroad Company, the said sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents, so as aforesaid assessed by the jury, with five hundred and forty-four dollars and fifteen cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll filed October 7, 1857.

J. M. MILLER, *Clerk.*

Damages	$111,727 71
Costs	544 75
	112,271 86

Fi. fa. No. 118, Jan. term, 1858.

April 26, 1859, this day came Mr. Ryan, as counsel of the defendant, and filed a bond of David Ferguson and John H. Tweedy to the plaintiff in the penalty of five hundred dollars, conditioned to
467 prosecute a writ of error to effect, and to answer all costs if the defendant shall fail to make good its plea; whereupon the said bond and sureties are approved by the court, and it is ordered that a writ of error and citation issue, and copy of writ of error filed for defendant in error.

April 22, 1861, ordered by the judge that $28,801 92, interest and costs, be paid on this judgment by the receiver, in case of Bronson & Soutter *vs.* La Crosse and Milwaukee R. R. Co., as per order filed in that case.

468 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 29th day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

Exhibit T T T, filed April 29, 1865. H. L. PALMER.

469 *Exhibit T T T.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the third day) of January, A. D. 1859: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties, by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever; and that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the
470 second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court that the said defendant, Selah Chamberlain, pay the costs to be taxed so far as they accrued in this proceeding against him, and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding

against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon; and also to ascertain and report the amount of the actual cost of permanent improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same; and that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

Decree signed, recorded, and enrolled February 11, A. D. 1859.

J. M. MILLER, *Clerk.*

471 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom and of the whole thereof now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 25 day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

Exhibit U U U, filed April 29, 1865. H. L. PALMRE.

472 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, on the first Monday of January, A. D. 1863, at the city of Mil-

waukee, in said district of Wisconsin: Present and presiding, the honorable Andrew G. Miller, district judge.

On the eighteenth day of the term, to wit, on the twelfth day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity.

473 *Exhibit U U U.—Order June* 12, 1863, *in eastern division foreclosure cause, putting Milwaukee and St. Paul Railway Company in possession, and order of April* 28, 1864, *vacating the same.*

United States district court.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

June 12th, 1863.—A petition in writing of the Milwaukee & St. Paul Railway Company having been presented to the court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp against the La Crosse and Milwaukee Railroad Co. and others, setting forth in substance that, in pursuance of a decree of this
474 court in that case, the western division of the La Crosse and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee & St. Paul Railway Co. is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse & Milwaukee Railroad Co.; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse & Milwaukee Railroad Co., who is prosecuting a judgment creditor's bill, and of the Milwaukee & Minnesota Co. in opposition thereto; and the court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse & Milwaukee Railroad Co. require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse & Milwaukee Railroad Co.; and it being represented to the court that persons interested in the Milwaukee & St. Paul Railroad Co.

own or control bonds included in the mortgage to these complainants and the subject of this suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage; it is thereupon ordered by the court that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee & St. Paul Railway Co. into the possession of the eastern division of the La Crosse and Milwaukee railroad, from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Co., subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with
475 the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said Railway Co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses; and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad. And that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La

Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

476 Circuit court of the U. S. for the dist. of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MIL. R. R. Co. *et al.*

To Hon. H. L. Palmer, auditor, &c.:

Hans Crocker, receiver, &c., respectfully represents, that in his accounts as rendered there is no charge for commissions or personal services as receiver, because he regarded the amount as not ascertained, but to be fixed in the discretion of the court. He further represents that since his appointment in the case of Sebre Howard, in June, A. D. 1860, he has substantially given his whole time to the duties of receiver, attending to no other regular business; that until the order of June, A. D. 1863, admitting the St. Paul Co. into possession, he had the sole responsibility for the management of the entire line from Milwaukee to La Crosse; that since said order he has been retained as receiver and has managed the affairs and receipts of the road so far as was consistent with the several orders as to said St. Paul Company before referred to; that for particulars of his services he refers to the testimony taken by the parties; that the gross receipts on said road up to June 13, 1863, $3,167,359 92, and since that date up to the 1st of March, A. D. 1865, $1,120,516 10; that he is informed by counsel, and believes, that although the allowance to a receiver is a matter of discretion with the court, still the practice of courts of chancery in England and this country has fixed such allowance at 2½ per cent. on large sums and five per cent. on small ones; that said gross sums were made up of small ones received from day to day from various sources; that his duties have been most responsible and unpleasant; that he has frequently been sued for acts as receiver in the State courts, has been at times enjoined in the State courts from running his cars, been threatened with arrest for obeying it, direction of counsel in this cause and running the cars notwithstanding the injunction; that he found the whole road in great disorder, the right of way not in all cases secured from private owners; that all this he has been compelled to arrange; that there are now pending against him suits to a large amount; that the contest between the parties to the different suits in which he has been appointed receiver has been most bitter, each party being jealous of the other and disposed to interfere with the management of the road; that by such interference and by threats of hostile proceedings his position has been made unpleasant, and that parties have even threatened to hold him responsible for moneys paid in good faith under order of the district court of the United States, because that court, together with counsel who assented, had made a mistake in construing a statute affecting jurisdiction. He therefore claims that the highest percentage that can by the rules of court be awarded to him should be given; that at 2½ per cent. the amount of his compensation would $107,196 87, and that he has so

fully paid out the funds received by him that he has no balance in his hands sufficient to cover any reasonable percentage, as by reference to his accounts will more fully appear.

He therefore prays that a suitable compensation may be allowed as aforesaid, and that in any order to close his accounts the balance due to him for compensation may be secured.

HANS CROCKER,
By JAMES S. BROWN, *his Att'y.*

Exhibit V V V, filed April 29, 1865. H. L. PALMER.

477 Memorandum of suits pending against Hans Crocker, receiver of the La Crosse and Milwaukee Railroad.

Fran's Loof, adm'r of the estate of Nicholas Hull, dec'd, *vs.* Hans Crocker, receiver. Circuit court, Mil. co. Dam. claimed, $5,000 and costs.

Peter Roth, adm'r, &c., of Matthias Schaub, dec'd, *vs.* Hans Crocker, receiver. Circuit court, Mil. co. Dam. claimed, $5,000 and costs.

Adolph Sutes *vs.* same. Circuit court, Monroe co. Damages, $10,000.

H. CROCKER, *Rec.*

Exhibit W W W, filed April 29, 1865. H. L. PALMER.

478 *Exhibit X X X.*

H. Crocker (receiver in Soutter, survivor, &c., *vs.* La Crosse and Milwaukee R. R. Co. *et als.*) to Cary & Pratt, Dr.

1864.		
Sept. 22.	To service in Bliss *vs.* Allen, Crocker *et als* ..	$25 00
"	To service in Cottrill *vs.* Cleveland *et als*	25 00
1865.		
Jan'y 17.	To service in Loop *vs.* Chamberlain	100 00
March.	To service in matter of taxes.....	500 00
	To service in Lutes *vs.* Crocker	50 00
		700 00

Exhibit X X X, filed May 6, 1865. H. L. PALMER.

479 *Exhibit Y Y Y.—Statement mileage of rolling stock on western division, July 1st, 1864, to September 1st, 1864.*

Locomotives, July 1st, '64, to Sept. 1st, '64.....	74,650
Passenger cars.....	79,242
Baggage and mail and express.....	46,499
Freight.....	380,762
	581,153

Exhibit Y Y Y, filed May 6, 1865. H. L. PALMER.

Exhibit Z Z Z.—Statement mileage rolling stock on the Milwaukee and St. Paul Railway, Sept 1st, 1864, to March 1st, 1865.

Locomotives, Sept. 1st,'64, to March 1st, '65	434,577
Passenger cars	465,933
Baggage, mail and express	230,172
Freight	1,514,469
	2,645,151

Exhibit Z Z Z, filed May 6, 1865. H. L. PALMER.

480 *Exhibit No. 1.—Statement showing total cost of repairs of rolling stock eastern and western divisions, June 30th, 1864, to September 1st, 1864; Milwaukee and St. Paul R. and eastern division, September 1st, 1864, to March 1st, 1865.*

Repairs, main line, June 30th to Sept 1st, '64	$37,095 63
Repairs Milwaukee and St. Paul Railway, including eastern division L. and M. R. R., September 1st, 1864, to March 1st, 1865	198,575 23
Total cost of repairs	235,670 86
Deduct amount charged to eastern division, as their proportion of the above, June 30th, '64, to March 1st, '65	26,850 23
	208,820 63

Exhibit No. 1, filed May 6, 1865. H. L. PALMER.

Exhibit No. 2.—Statement of cost of repairs of rolling stock of Milwaukee and St. Paul Railway from September 1st, 1864, to March 1st, 1865.

Total cost, Sept. 1st, 1864, to March 1st, 1865	$178,687 52

Exhibit No. 2, filed May 6, 1865. H. L. PALMER.

Exhibit No. 3.—Statement cost of repairs rolling stock charged western division Milwaukee and St. P. Railway.

June 30th, 1864, to September 1st, 1864	$30,133 11

Exhibit No. 3, filed May 6, 1865. H. L. PALMER.

481 Circuit court of the United States for the district of Wisconsin, in equity, before H. L. Palmer, auditor.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Company and others.

We hereby stipulate that the printed record in the land grant cause, so called, being the cause of Bronson, Soutter & Knapp, to foreclose the land grant mortgage on the La Crosse and Milwaukee railroad, shall be considered as in evidence before said auditor; that the same need not be filed, being so voluminous, but that it shall be taken and considered to be part of the testimony before said auditor, and before the court, on exceptions, if any shall be taken to the auditor's report, with the same effect as though the original record or a duly authenticated copy were here and now introduced and filed before said auditor.

May 6, 1865.

MATT. H. CARPENTER,
Sol'r for Def'ts.
CARY & PRATT,
Sol'rs for St. P. R. R. Co. and for Complainants.
JAMES S. BROWN,
Att'y for Receiver.

Exhibit No. 4, filed May 6, 1865. H. L. PALMER.

482 JAMES T. SOUTTER, surv., &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Co. *et al.*
On reference from the circuit court of the United States before Hon. H. L. Palmer, auditor.

It is hereby stipulated that the several orders appointing Hans Crocker receiver, made in the cases of Bronson, Soutter and Knapp, and in the case of Sebre Howard, and in the case of Bouton against said La Crosse R. R. Co. *et al.*, and also in this case, and also all orders modifying and enlarging his powers, and all other orders and acts of the district and circuit courts affecting the receiver, also the account of the receiver filed in said causes and the action of the court thereon, shall be considered in testimony in this cause, and (even if copies are not produced) may be referred to in argument and considered by the auditor as if produced, subject, of course, to all objections as to the materiality of the testimony, and all objections that the orders are irregular and void. This stipulation being merely to save cost of producing certified copies of said orders.

MATT. H. CARPENTER, *Sol'r.*
JAMES S. BROWN, *Att'y for Receiver.*
CARY & PRATT, *Sol'rs for M. and St. P.*

Exhibit No. 5, filed May 6, 1865. H. L PALMER.

483 Circuit court of the U. S. for the district of Wisconsin, before H. L. Palmer, auditor.

JAMES T. SOUTTER, surv., &c.,
vs.
THE LA CROSSE AND MIL. R. R. Co. *et al.*

It is stipulated that the testimony of Russell Sage, before Hon. H. L. Palmer, auditor, on the reference out of this court to ascertain costs, &c., may be copied and made part of the evidence in this cause as if given here, so far as the same refers to the agency of said Sage for the complainant and the majority of the bondholders secured by the second mortgage.

MATT. H. CARPENTER, *Sol'r.*
JAMES S. BROWN, *Att'y for Receiver.*
CARY & PRATT, *Sol'rs for M. & St. P. R. W. Co.*
THOMAS L. OGDEN, *Sol. for Compl't.*

Exhibit No. 6, filed May 6, 1865. H. L. PALMER.

484 Car department.—Inventory of rolling stock, tools, machinery, and materials.

19 first class passenger cars	$37,300
6 second class baggage cars	7,800
3 baggage cars	2,100
3 mail and express cars	2,550
448 house fr't cars	*291,200
6 house caboose cars	1,200
76 platform cars	41,800
48 hand cars	3,800
6 rubble cars	330
4 wood cars	160
2 snow ploughs	200
1 crane and pile-driving car	3,998
	392,438

Exhibit No. 7, filed May 7, 1865. H. L. PALMER.

484 *Exhibit No. 7, filed May 7, 1865.—H. L. Palmer.*

Car department.—Inventory of rolling stock, tools, machinery, and materials.

4,238 lbs. shafting hangers and pulleys, 1s	$529 75
1 wood turning lathe and centre shaft	90 00
1 mortising machine	12 00
2 drills	210 00
1 wood planer	575 00
2 splitting saws, table complete	40 00
1 tenon saw, table complete	30 00

* The 40 box cars belonging to the western division are to be deducted from this.

1 upright saw, table complete	120 00
1 irregular cutter	125 00
2 boring machines	176 00
1 bolt cutter	265 00
29 hammers, 16*s*	58 00
8 iron vices	96 00
25 jack-screws, $12	300 00
57 screw wrenches, 12*s*	85 50
5 sledges, $2	10 00
2 handsaws, $2	4 00
27 cold-chisels, 4*s*	13 50
3 screw plates, $6	18 00
3 ratchet drills, $6	18 00
2 grindstones	15 00
23 carpenters' benches, $5	115 00
23 bench screws, 10*s*	28 75
4 carsmith benches, $3	12 00
Am't carried forward	395,384 50
Am't bro't forward	395,384 50
1 copying press	10 00
1 platform scale	35 00
4 cupboards	35 00
3 desks	45 00
1 table	5 00
4 chairs	7 00
1 clock	20 00
15 stoves and pipe, complete	355 00
Wrecking tools	495 00
246½ galls. Smith's wearing body varnish, $3 80	936 70
101⅝ gallons Smith's hard, $3 60	304 50
28¾ gallons pol. ex. light, $3	86 25
1½ gallon locomotive, $4 25	6 37
36 gallons asphaltum, $1 40	50 40
5 gallons (N. & H.) English, $5 75	28 75
1 66-100 gallons Smith's, (N. J.,) $5 40	8 96
6 gallons damar, $4 70	28 20
17¼ gallons Japan dryer, $1 45	25 01
126 lbs. chrome green, 17 c	21 42
23 lbs. chrome green, 17 c	3 91
2 cans, 6 lb. ea., scar't vermillion, 12, 2*s*	3 00
159 lbs. chrome yellow, 17 c	27 03
4½ lbs. Prussian blue, 8*s*	4 50
1 4-12 doz. fitches, 6*s*	1 00
190 galls. Grant's pat. roofing cement, 10*s*	237 50
477 gallons linseed oil, $1 85	882 45
90 lbs. Indian red, 16c	14 40
485 1,350 lbs. Horicon paint, dry, 2½	33 70
10 lbs. drop black, 2*s*	2 50

104 lbs. English vermillion, $1 25	130 00
31¾ lbs. Chatameci drop lake, 85	26 98
6 lbs. Chinese vermillion, $1 35	8 10
3 lbs. French, $1 50	4 50
6 lbs. flake white, 16	96
Amount carried forward	399,268 59
Amount brought forward	399,268 59
1 box white chalk crayons, 4*s*	50
12 lbs. French zinc, (dry,) 15	1 80
12 lbs. green flock, 6*s*	9 00
25 lbs. white zinc, (in oil)	2 25
50 lbs. brt. sienna, 10	5 00
175 lbs. " umber, 6½	11 38
62 lbs. lampblack, 2*s*	15 50
100 lbs. red lead, 14 c	14 00
200 lbs. whiting, 2¼	4 50
300 lbs. yellow ochre, 2½	7 50
100 lbs. mixed Horicon paint, 8 c	8 00
8 lbs. Vandyke brown, 1*s*	1 00
60 lights glass 8 by 10, Am'n, 2½	1 50
30 " " 10 by 14, 4½ "	1 35
58 " " 10 by 12, 4 "	2 32
177 " " 9 by 12, 3 " 1-5	5 66
80 " " 9 by 14, " 4	3 20
27 " " 12 by 20, s., " 10	2 70
27 " " 14 by 20, Scag's fr., 24	6 48
16 " " 20 by 26, d fr, 91	14 56
14 " " 18 by 22, " 83	8 30
7 " " 24 by 28, " $1 55	10 85
20 " " 14 by 22, " 62½	12 50
11 " " 10 by 15, s am, 5	55
1 box, 50 feet, 12 by 18, $4 25	4 25
1 " " 9 by 12, $3 50	3 50
1 " " 10 by 16, $4	4 00
1 " " 18 by 24 d fr	15 00
10-20 pack gold leaf, $13	6 50
12 papers bronze	8 00
Gold bronze	17 00
15 lbs. orange mineral, 15 c	2 25
100 lbs. litharge, 14	14 00
1 gal. Stimson, Valentine & Co. nonpareil var	4 50
Amount carried forward	399,497 99
Amount brought forward	399,497 99
3 kegs p. & w. pure white lead, $9 33, 8½	79 30
230 lbs. (Cleveland) pure white lead, 12 c	27 60

270 lbs. mixed paint, 18		48 60
2 lbs. drop lake, $3 50		7 00
½ gal. turpt., $4 25		2 13
4 doz. tubes of colors, 12*s*		6 00
1 tube carmine, 8*s*		1 00
⅓ dozen tubes, lake, $6		3 00
200 lbs. English white lead, (dry,) 9½		19 00
8¼ gals. benzole, 45		3 71
486 2 blinders, 12*s*		3 00
2 blinders, $3 50		7 00
8 00 brass-bound paint brushes		7 60
4 0000 " "		5 00
6 000 " "		6 75
9 000000 wire-bound "		8 25
2 0000 " "		2 00
23 00 common varnish, 3 00 extra, 8 000 common, 6*s*		25 00
16 No. 8 sash tools, $4 per doz		5 33
2 No. 5 sash tools, 2*s*		50
18 No. 2 flat hair brushes		3 00
12 No. 1 " "		1 25
1 dozen black sable stripers		4 50
2 4-12 doz. " " $2 40		5 60
4 doz. C. H., fine line, 60 c		2 40
10 " " seven quill, 36 c		3 60
16 8-12 doz. C. H., assort'd		10 00
16 " " artists' brushes		3 75
1 " dusters		8 00
½ dozen varnish brushes, (used,) $2 50		1 25
½ dozen 0000 pt. brushes, (used,) $4 50		2 25
3 chamois skins		1 50
Amount carried forward	399,813	36
Amount brought forward	399 813	36
1 doz. graining combs		4 50
3 dozen paint brushes buckets		6 48
7 tin caddies, large		49 00
3 tin caddies, small		10 50
1 marble slab and muller		5 00
2 paint mills		20 00
½ doz. 5 gal. cans		4 50
1 diamond		5 00
2 whitewash brushes, 3		6 00
3 paint strainers, 3*s*		1 13
65,886 feet long car sills and plates, "Norway pine," $12		790 63
86,641 feet com. pine plank and boards, $9		779 76
52,122 feet 2d class pine, $20		1,042 44
61,514 feet long oak car timber, $20		1,230 28
97,729 feet " " $16		1,562 66

84,560	feet long oak plank, $14		1,183 84
51,520	feet ash " $18		927 36
11,028	feet maple timber, $12		132 23
4,860	feet maple boards, $12		58 32
9,067	feet white-wood boards, $18		163 51
483	feet hickory plank, $18		871
320	feet bass-wood boards, $8		2 56
3,180	feet cherry boards, $20		63 60
5,026	butternut boards, $12		60 31
3,314	feet blk. walnut plank and boards, $35		115 99
2,316	feet 1½-in. hard pine flooring, $15		34 74
9,032	feet 2-in. matched flooring, "com.," $18		162 57
4,500	feet 1¼ " " " $23		103 50
12,957	feet planed roofing boards, $17 50		210 26
	5,600 feet 2d flooring, $23		118 80
487	39,045 lbs. cast iron, 3¼		1,268 96
	14,906 lbs. worked wr't iron, 87		1,192 48
5,251	lbs. drft. irons, 1*s*		356 37
51,181	lbs. old cast iron, 1½		767 71
	Am't for'd		412,263 06
	Am't bro't for'd		412,263 06
2,417	lbs. pass. car steel springs, 1*s*		302 12
7,251	lbs. wr't bolts and nuts, 10 c		725 10
1,507	lbs. brass boxes, 38 c		572 66
396	lbs. wr't washers, 1*s*		49 50
942	lbs. old brass boxes, 20 c		188 40
437	lbs. brake chains, 1*s*		52 65
13	large coupling chains, 863 lbs., 1*s*		112 19
51	white steel springs, $7		357 00
628	lbs. rubber, 80 c		502 40
1	set bolster		202 50
5	new hand-cars, framed, $10		50 00
14	new 33-in. car-wheels and axles, fitted		784 98
8	" " " on old axles		194 00
30	old " " "		276 00
138	old 30 " " "		1,055 70
28	new 33-in. car-wheels, Blanchard & A., $14 50		406 00
46	new 33-in. " Richardson & Banner, $17		782 00
28	new 30-in. " $13 50		358 00
31	old 33-in. " $7 50		232 50
10	old 30-in. " $6 75		67 50
73	old wheels for scrap, 34,540 lbs., 19 c		518 10
3	pair rubber car-wheels and axles		44 86
	Labor and materials, rebuilding 11 and 12 pass. cars		262 92
149	y'ds drab carpeting, $1 40		209 60
10½	" " $1 40		14 70
6½	" " $1 50		9 75
3	" " $1		3 00

3 yards crimson plush, $2		6 00
11 new " car seats, $5 50		60 50
25 old " $2 50		62 50
37 yds. L. duck, 28c		10 36
11 chair cushions, 16*s*		22 00
37½ y'ds maroon ribbed reps., $1 80		67 50
40 yards moquette, $3 50		140 88
31⅛ " " $5 25		162 75
Am't for'd		421,129 68
Am't bro't for'd		421,129 68
11 yds. green baize, 80 c		8 80
15 yards red flannel, 48 c		7 20
37 yards bed-ticking, 20 c		7 40
4 yards canton flannel, 3*s*		1 50
32 yards bleached drill, 18 c		576
20 yards brown sheeting, 34 c		6 80
56 yards burlaps, 2*s*		14 00
8¼ yards green en cloth, 7*s*		7 22
60 yards 122 in. duck, $1 98		118 80
1 head lining		29 08
150 lbs. curled hair, 44 c		66 00
488 200 lbs. old curled hair and moss, 25 c.		50 00
1 gro. plus hnails, 10*s*.		1 25
4 do. do. do. 6*s*		3 00
45 gross plush buttons, 6*s*.		33 75
8 do. do. do. 5*s*.		5 00
8 gross plush nails, 6*s*		3 20
5 papers lining, 2*s*		1 25
48 glass car lamp globes, 6*s*.		36 00
8 car lamps, $3 75		30 00
2 do. $3 50		7 00
5 paraffine lamps, 6*s*		3 75
9 kerosene lamp bottoms, 10*s*		11 25
3 oil can, 6*s*		2 25
6 doz. coal oil burners, $2 75		16 50
172 paraffine lamp chimneys, 10 c		17 20
29 bronze bracket lamps, 10*s*		36 25
31 car lamp chimneys, $1 12.		34 72
11 white hand lanterns, $1		11 00
7 ruby hand lanterns, $1 50		10 50
21 10 in. ventilator rings, $1 50		31 50
32 7 and 8 in. ventilator rings, $1		32 00
5 4 in. ventilator rings, 4*s*		2 50
108 pair strap hinges 6, 8, 10, 12 in., $1		118 80
Am't for'd		421,900 91
173 gross iron screws		100 18
46 gross brass cap do		152 64

1 keg finishing nails	7 00
1,310 lbs. cut nails, 5½ c	98 25
660 lbs. clinch nails, 8 c.	52 80
53 papers brad and clout nails, 1*s*	6 62
15 papers ⅝ do. 4 c	60
12 doz. papers gimp tacks, 96 c	11 52
115 papers 10 oz. tacks, 8 c	9 20
72 do. 6 do., 5 c	3 60
84 do. 4 do., 4 c	3 36
125 do. 12 do., 9 c	11 25
120 do. 8 do., 7 c	8 40
2,156 do. 18 & 16 do., 1 *s*	269 50
33 do. 14 do., 8 c	2 64
1 paper copper, 15 c	15
728 lbs. coach screws, 12 c	87 36
680 carriage bolts, assorted	28 37
44 yds. jack chain, 18 c	7 92
179 pair brass butts, assorted	31 98
6 doz. car window fasteners, $2 25	13 50
2 papers finishing nails, 2*s*	50
110 chest and drawer brass locks	199 49
167 chest drawer and cupboard iron	79 50
26 freight car locks, 8*s*	26 00
21 switch locks, 8*s*	21 00
2 dead locks, 5*s*	1 25
15 wardrobe and desk locks, 2*s*	3 75
3 padlocks, $2	6 00
119 axe helves, 1*s*	1 79
97 sledge handles, 2*s*	24 25
489 149 adze and pick, 2●	37 25
18 hammers, pick, 16 c	2 88
9 flags and staff	2 00
Am't for'd	423,213 41
Am't bro't for'd	423,213 41
68 car brakes, complete, $2 50	170 00
23 freight car doors, $3 50	80 50
50 grain car doors, $1 67	83 50
14 freight car trucks framed, $5 60.	78 40
58 brake beams and heads, 2*s*	14 50
13 pass. car steps, $2 50	32 50
5 set dies and plates, $1	5 00
14 augers and auger bitts	10 50
1 brace, 10*s*	1 25
200 lbs. S wrenches, 1*s*.	25 00
4 freight-house door rollers, 6*s*	3 00
4 pinch bars, $2 40	9 60
6 crowbars, $2 40.	14 40
5 door clamps, 12*s*	7 50

273 lbs. sole leather, 27		73 71
96 feet (5 in.) belting, 40 c		38 40
3 tin (3 gall.) cans, 8*s*		3 00
27 tin (2 gall.) cans, 6		20 25
1 tin (4 gall.) water-pot, 12*s*		1 50
3 tin (1 gall.) water-pot, 4*s*		1 50
26 tin (1 gall.) oil can, 2*s*		75
2 tin (1 gall.) pail, 3*s*		75
71 tin dust pans, 2*s*		1 75
17 tin dippers, 10 c		1 70
7 tin dripping pans, 6*s*		5 25
2 tin pint measures, 15 c		30
11 tin lamp fillers, 2*s*.		2 75
1 tin funnel, 2*s*		25
23 tin pint oil cans, 30 c		6 90
2 tin small cans, 10 c		20
2 tin wash basins, 2*s*		50
6 tin gallon measures, 6*s*		4 50
3 ash pails, $1		3 00
3 coal scuttles, $1 25		3 75
5 porcelain lined hoppers, $3 50		17 50
Am't for'd		423,946 27
Am't bro't for'd		423,946 27
6 porcelain-lined urinals, $2 50		15 00
4 white enam'd wash sinks, plated plugs, $6 25		25 00
8 fire shovels, 15 c		1 20
7 pallet knives, 4*s*		3 50
2 doz. axes		15 00
9 doz stove polish, 58 c		5 22
7 Cook's pat. ventilators, $5.		35 00
11 gross lampwicks, 12*s*		16 50
3 railroad adzes, 12*s*		4 50
13 lbs. twine, 40 c		5 25
27 brass door knobs, 6*s*		20 25
12 plated knobs, 16*s*		24 00
24 car rim locks, 6*s*		18 00
490 3 porcelain knobs, 2*s*		75
3 rural knob latches, 3*s*		1 12
20 porcelain knobs, 4*s*		10 00
13 brass car locks, 22*s*		22 75
20 car-door keys, 1*s*		2 50
50 seat-lock keys, 6 c.		3 00
9 door handles, 1*s*.		1 12
6 door locks, 12*s*		9 00
2 cottage-door locks, 6*s*.		1 50
14 night latches, 8*s*		14 00
8 lbs. escutcheon pins, 8*s*		8 00
74 plated escutcheons, 8 c		5 92

66 lbs. brass seat hooks, 45 c		29 70
11 doz. seat locks, $5		55 00
4 lbs. brass-bell cord hangers, 44 c		1 76
4 brass bolts, 20 c		80
6 door pulleys, 6*s*		4 50
4 boxes soap, $5 95		23 80
2 car brushes, 10*s*		2 50
1 counter brushes, 3 6*d*		44
2 stove brushes, 2 6*d*		62
5 lamp chimney brushes, 5 c		25
Am't for'd	424,333	67
Am't bro't for'd	424,333	67
2 broom brushes, 10 c		20
2½ bales lamp wicking, 57 lbs., 65 c		24 05
5 1-inch brass faucets, $2		10 00
6 ¾ " " " $1 64		9 96
200 lbs. lead pipe, 9 c		18 00
41 lbs. small brass castings, 45 c		18 45
7 steel squares, 10*s*		8 75
5 handsaws, 20*s*		12 50
1 pot-stove damper, $5		5 00
1 side lacing leather, 20*s*		2 50
5 sponges		1 38
60 lbs. zinc, 16 c		9 00
9 floor maps, 1*s*		1 12
43 water pails, 20 c		8 60
2 doz. shovels, $12		24 00
26 scoops, 10*s*		32 50
85 hand screws, 82 c		69 70
12 lbs. brass door-catches, 45 c		5 40
4 oil gates, 3*s*		1 50
4 lamp trimmers, 4*s*		2 00
11 lbs. window lifts, 45 c		4 95
8 lbs. bell-cord hangers, 45 c		3 60
10 lbs. seat hooks, 45 c		4 50
10 shutter hooks, 2*s*		2 50
3 doz. blind fasteners, 12*s*		4 50
24 match lighters, 3*s*		9 00
16 lbs. seat rivets, 4*s*		8 00
17 lbs. window fasteners, 19 c		3 23
2 doz. hangers and rims, $2 50		5 00
2 doz. connexions, 1*s*		25
25 bushings, 2*s*		6 25
18 coupling hooks, 2*s*		4 50
491 8 doz. window springs, 4*s*		4 00
6 gross screw eyes, 5*s*		3 75
6 doz. screw hooks, 3*s*		2 25
Am't for'd	424,664	56

Am't bro't for'd		424,664 56
4½ doz. drawer pulls, 8*s*		4 50
9 doz. wr't hooks and staples, 3*s*		3 38
26 doz. mahogany knobs, 20 c		5 20
4 notice plates, $1 50		6 00
5 spring bolts, 1*s*		62
3 doz. cabin-door locks, 6*s*		2 25
5 " " " 2*s*		1 25
11 level glasses, 10 c		1 10
4 copper-belt rivets, 78 c		3 12
2 iron bolts, 1*s*		25
3 hat baskets, $3 50		10 50
2 panel doors, $2		4 00
2 ticket cases, $6		12 00
2 ga'l iron smoke jacks, 2*s*		50
7 track gauges, 6*s*		5 25
4 bay window pass. cars, $3 50		14 00
3 cross-cut saws, $3 50		10 50
Screws, hinges, and locks, as per bill of Bailey, Lang & Co., April 8, '63 :		
Screws	$88 26	
Screws, brass	10 40	
Adv., 20 per cent., $20 84	2 08	
Screws, iron	80 54	
10 per cent. adv.	16 88	
		198 16
10 gro. brass crews	35 10	
20 per cent. adv.	7 02	
		42 12
Padlocks		30 75
Locks	101 22	
Less 20 per cent.	20 24	
		80 98
1¾ doz. heavy strap hinges	15 09	
1 ¾ dozen light hinges	8 58	
	23 67	
10 per cent. adv	2 37	
		26 04
		425,127 03
Deduct am't of rolling stock		392,438 00
Carried over		32,689 03

491 Machine shop.—Inventory of rolling stock, machinery, tools, and materials, May, 1863.

Locomotives :

No. 1, good order	$10,000 00
" 2, " "	10,000 00
" 3, " "	7,200 00

" 4,	"	"	yard engine	7,200 00
" 5,	"	"		7,750 00
" 6,	"	"		7,750 00
" 7,	"	"		9,000 00
" 8,	"	"		8,407 88
" 9,	"	"		8,500 00
" 10,	"	"		8,750 00
" 11,	"	"		9,200 00
" 12,	"	"		9,200 00
" 13,	"	"		9,000 00
" 14,	"	"		9,000 00
" 15,	"	"		12,000 00
" 16,	"	"		12,000 00
" 17,	"	"		12,000 00
" 18,	"	"		9,500 00
" 19,	"	"		9,500 00
" 20,	"	"		9,500 00
" 21,	"	"		9,500 00
" 22,	"	"		8,000 00
" 23,	"	"		8,500 00
" 24,	"	"		8,500 00
" 25,	"	"	yard engine	1,400 00
" 26,	"	"		9,750 00
" 27,	"	"	good order	9,750 00
" 28,	"	"		6,500 00
" 29,	"	"		9,000 00
" 30,	"	"		9,000 00
" 31,	"	"	yard engine	1,500 00
Locomotive patterns				2,607 00
Car	"			605 28
Tool and road				678 55
Lax elevator				32 09
Am't for'd				270,780 73
Am't bro't for'd				270,780 73
One stationary engine				1,200 00
One boiler and fixtures				600 00
One hand lathe				175 00
One upright drill				130 00
One "	"			250 00
One large planer, (9 f't bed,)				700 00
One medium planer, (8 f't bed,)				550 00
One small planer, (5 f't bed,)				250 00
One double-headed engine lathe				600 00
One double-headed engine lathe				250 00
One driving wheel				2,500 00
One screw-cutting lathe, (14 f't bed,)				450 00
One "	"	"	(12 f't bed,)	500 00
One engine lathe, (16 bed,)				500 00

492	One screw cutting machine	200 00
	One nut tapping machine	150 00
	One force and lifting pump	75 00
	One cylinder-boring bar	100 00
	One valve seat planer	90 00
	One wheel press	100 00
	One boring machine	350 00
	18 bench vices, $15	270 00
	150 feet shafting, hangers and pulleys att	1,200 00
	Belting, &c	400 00
	Stocks and dies	80 00
	One locomotive truck for extra service	250 00
	4 large carrying jacks	300 00
	6 locomotive jacks, $10	60 00
	6 scroll chucks	200 00
	One planer chucks	40 00
	2 pistons, fitted	40 00
	5 executive straps, fitted	33 00
	One set piston packing	35 00
	One set composition packing	60 00
	2 loco. side rods (finished)	150 00
	2 loco. main rods (partly finished)	90 00
	Am't for'd	283,708 73
	Am't bro't for'd	283,708 73
	55 dozen files, $8	440 00
	6 dozen monkey wrenches, $20	360 00
	36 ft (one in.) rubber hose, 40 c	14 40
	240 ft. (2¼ in.) rubber hose, m'e shop, 60 c	144 00
	70 ft. (2¼ in.) rubber hose, engines, 60 c	42 00
	30 rubber buckets, $2 50	75 00
	96 lbs. rubber cloth, 6*s*.	75 00
	1½ reams emery paper, $10	15 00
	6 ratchet drill stocks, $5	30 00
	100 lbs. hemp packing, 2*s*	25 00
	50 lbs. marline yarn, 16 c	8 00
	2½ dozen patent pails, $2 75	6 87
	65 lbs. bar soap, 9½ c	6 17
	4 dozen head-light chimneys	11 00
	220 ft. leather bell cord, 8 c	17 60
	383 lbs. taps and rimmers, 4*s*	141 50
	1,973 lbs. steel tools (mac. shop,) 20 c	394 60
	350 lbs. steel tools, (r'd house,) 20 c	7 00
	2,005 lbs. iron tools, (mac. shop,) 10 c	200 50
	896 lbs. cast iron tools, (mac. shop,) 10 c	89 60
	1,725 lbs. iron tools, (r'd house,) 10 c	172 50
	45 lbs. steel wire, 20 c	9 00
	53,930 lbs. locomotive castings, 3¾	2,022 36
	1,855 lbs. loco. castings, (finished) 10 c	155 50

49,120 lbs. loco. and road castings, (scrap) $1\frac{1}{2}$		736 80
9 water gates, $7		63 00
676 lbs. road castings, (furniture) $3\frac{3}{4}$		25 35
40,564 lbs. road joint chairs, $3\frac{3}{4}$		1,521 15
9,261 lbs. switch chairs, frogs, and switches, $3\frac{3}{4}$		347 28
3,692 lbs. loco. brass castings, 40 c		1,476 88
153 lbs. loco. brass castings, (finished) 60 c		91 80
493 1,255 lbs. scrap brass, 25 c		313 75
10 loco. steam gauges, (old) $7		70 00
50 ft. (2 in.) gas pipes, 60 c		18 00
60 ft. (1 in.) gas pipes, 20 c		15 60
Am't for'd		292,850 86
Am't bro't for'd		292,850 86
8,203 lbs. punched nuts, 11 c		302 33
2,690 lbs. new drivers, $3\frac{3}{4}$ c		97 11
2,690 lbs. scrap nuts, 3 c		80 70
30,561 lbs. new tires, 14 c		4,278 54
6,233 lbs. old tires, 6 c		373 98
23,750 lbs. driving wheels, $1\frac{1}{2}$ c		356 25
2,200 lbs. driving axles, 3 c		66 00
17,262 lbs. driving car axles, 3 c		517 86
17 pair 30 in. wheels and axles fitted, $50		850 00
14 pair 28 in. wheels and axles, fitted, $50		700 00
2 pair 26 in. wheels and axles, fitted, $48		96 00
4 pair 24 in. wheels and axles, fitted, $46		184 00
31 new 30 in. truck wheels, $15		465 00
30 new 28 in. truck wheels, $15		450 00
12 new 26 in. truck wheels, $15		180 00
51 old 28 in. truck wheels, $7		357 00
23 old 30 in. truck wheels, $7		161 00
1,400 galls. tallow, 80 c		1,120 00
173 galls. lard oil, 80 c		154 40
1,517 galls. coal oil, 60 c		910 20
627 galls. freight car oil, 80 c		501 60
127 galls. engine oil, 75 c		96 75
107 galls. head-light oil, $1 10		117 70
301 galls. elephant oil, $1		301 00
2,241 lbs. wiping waste, 30 c		672 30
Copper-shop :		
One pair bellows		14 00
One bench vice		7 00
Two pair bench shears		18 00
One pair snips		5 00
One bending board		4 00
56 lbs. steel tools, 2*s*		14 00
603 lbs. wr't iron, 22 c		132 66

130 lbs. sheet copper, 55 c	71 50
90 lbs. copper pipe, new, 6*s*	60 00
Am't for'd	306,567 24
Am't bro't for'd	306,567 24
365 lbs. copper pipe, old, 30 c	109 50
160 lbs. old brass, sheet, 35 c	56 00
265 lbs. lead, 9 c	23 85
55 lbs. block tin, 53 c	29 15
227 lbs. scrap copper, 25 c	56 75
6 lbs. Babbett's metal, 55 c	3 30
25 lbs. hardening, 50 c	12 50
9 lbs. spelter solder, 50 c	4 50
888 lbs. 2 in. copper flue, 53 c	470 64
260 lbs. 2 in. brass tubes, 38 c	98 89
630 lbs. 2 in. copper tubes, old, 43 c	270 90
552 lbs. 1¾ in. copper tubes, new, 53 c	282 56
494 65 lbs. ¾-in. copper tubes, new, 53 c	34 45
247 lbs. sheet lead, 8 c	16 76
96 lbs. brass banding, 52½ cts. per lb	50 40
Miscellaneous tools	6 00
Boiler-shop :	
One punching and shearing machine	200 00
One sett rollers	80 00
2 portable forges	64 00
One pair hand shears	8 00
2 screw punches	60 00
One flue saw	6 00
6 monkey wrenches	9 00
616 lbs. steel tools, 18 c	110 88
1,330 lbs. iron tools, 7 c	92 10
2,409 lbs. cast flanging blocks, &c., 4 c	96 36
3,561 lbs. ½ Low Moor iron, 7½ c	267 07
2,730 lbs. 5-16 common iron, 5½ c	150 15
2,285 lbs. Nos. 12, 14, 16, 18 iron, 5½ c	125 76
83 lbs. galvanized iron, 14 c	11 62
903 lbs. ⅝ rivets, 7 c	49 21
367 lbs. ⅜ rivets, 7c	25 69
728 lbs. assorted rivets, 12½ c	91 00
38 lbs. band iron, 7 c	2 66
Am't for'd	309,545 80
Am't bro't for'd	309,545 80
643 lbs. scrap iron, 3 c	19 26
221 square feet bonnet cloth, 10 c	22 10
2 small stocks	50 00

	Tin shop :	
	One pair thirty-in. rollers	15 00
	One stove-pipe folder	8 00
	One groover	7 00
	One tin folder	10 00
	One large beading machine	25 00
	One small beading machine	12 50
	One small turner machine	6 00
	One large burring machine	6 00
	One small burring machine	5 50
	One letting-down machine	6 00
	One wiring machine	8 00
	One roofing folder	3 00
	2 bench vices	12 00
	One press punch	35 00
	One 30-in. iron clamp	8 00
	3 cast-iron mandrels	8 50
	One gutter reader	3 00
	One swedge reader	75
	One flat mandrel	5 00
	3 rivet sets	1 75
	One dusting brush	75
	One stove-pipe mandrel	7 50
	One beak horn stake	10 00
	One blow horn stake	3 50
	One ratchet horn stake	3 75
	One creasing horn stake	3 00
	One candle mould	2 00
495	One needle case	1 75
	One planishing stake	6 00
	3 conductor stakes	3 00
	2 elevator bucket stakes	3 50
	Am't for'd	309,867 91
	Am't bro't for'd	309,867 91
	One cast-iron face plate	1 25
	12 hammers	8 00
	3 raising hammers	3 00
	7 mallets	1 13
	2 squares	2 50
	4 hand grooves	2 50
	2 pair small shears	3 00
	16 chisels	4 00
	11 punches	1 75
	6 hollow punches	2 50
	5 fire-pots	8 00
	10 soldering irons	9 00
	2 pair large shears	12 00

Miscellaneous, tools, &c	12 00
Patterns for tin-work	12 00
112 sheets 1 X tin, 14 by 20	20 75
133 sheets 1 XXX tin, 14 by 20	33 46
313 sheets 16 tin, 10 by 14	23 50
171 sheets 1 X tin, 10 by 14	13 50
266 sheets roofing tin, 14 by 20	49 40
645 lbs. galvanized iron, 14 c	90 30
489 lbs. Russia iron, 20 c	97 80
140 lbs. common iron, 7 c	9 80
140 lbs. iron wire, 9 c	12 60
46 lbs. galvanized wire, 12 c	5 22
7 lbs. copper wire, 65 c	4 55
3½ lbs. brass wire, 35 c	1 22
25 lbs. tinners rivets, 45 c	11 25
6 sheets perforated tin, 2*s*	1 50
Blacksmith-shop :	
3,580 lbs. anvils, 12½ c	447 50
990 lbs. cast anvils, 5 c	49 50
2,585 lbs. face plates, 5 c	129 25
1,125 lbs. bolt headers, 6 c	67 50
600 lbs. cast horse, 4 c	24 00
	311,043 14
Am't bro't for'd	311,033 14
238 lbs. battering ram, 5 c	11 90
543 lbs sledges and hammers, 13 c	70 59
1,049 lbs. swedges, 10 c	104 90
1,774 lbs. fallers and chisels, 30 c	532 20
410 lbs. cast swedge and blocks, 4 c	16 40
2,866 lbs. tongs, 10 c	286 60
210 lbs. spring wrench, 8 c	16 80
2,753 lbs. mandrils and pins, 10 c	275 30
2,892 lbs. pat. swedge blocks and dies, 10 c	289 20
2 bellows, $15	30 00
2 cranes, $25	50 00
One set taps, dies and plate	40 00
496 43 tons coal, $9	387 00
55,953 lbs. flat rolled iron, 5 c	2,797 65
3,204 lbs. hammered iron, 7 c	224 28
3,003 lbs. square iron, 5 c	150 15
18,165 lbs. round-iron, 5 c	908 25
772 lbs. angle iron, 6 c	46 38
293 lbs. half-round iron, 6 c	17 58
3,739 lbs. band I iron, 6 c	224 34
4,556 lbs. cast-steel iron, 20 c	911 20
1,277 lbs. forgings, 10 c	127 70
1,470 lbs. crank pins, 8 c	117 60

Tin shop :

One pair thirty-in. rollers		15 00
One stove-pipe folder		8 00
One groover		7 00
One tin folder		10 00
One large beading machine		25 00
One small beading machine		12 50
One small turner machine		6 00
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One roofing folder		3 00
2 bench vices		12 00
One press punch		35 00
One 30-in. iron clamp		8 00
3 cast-iron mandrels		8 50
One gutter reader		3 00
One swedge reader		75
One flat mandrel		5 00
3 rivet sets		1 75
One dusting brush		75
One stove-pipe mandrel		7 50
One beak horn stake		10 00
One blow horn stake		3 50
One ratchet horn stake		3 75
One creasing horn stake		3 00
One candle mould		2 00
495 One needle case		1 75
One planishing stake		6 00
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645 lbs. galvanized iron, 14 c	90 30
489 lbs. Russia iron, 20 c	97 80
140 lbs. common iron, 7 c	9 80
140 lbs. iron wire, 9 c	12 60
46 lbs. galvanized wire, 12 c	5 22
7 lbs. copper wire, 65 c	4 55
3½ lbs. brass wire, 35 c	1 22
25 lbs. tinners rivets, 45 c	11 25
6 sheets perforated tin, 2*s*	1 50
Blacksmith-shop :	
3,580 lbs. anvils, 12½ c	447 50
990 lbs. cast anvils, 5 c	49 50
2,585 lbs. face plates, 5 c	129 25
1,125 lbs. bolt headers, 6 c	67 50
600 lbs. cast horse, 4 c	24 00
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Am't bro't for'd	311,033 14
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543 lbs sledges and hammers, 13 c	70 59
1,049 lbs. swedges, 10 c	104 90
1,774 lbs. fallers and chisels, 30 c	532 20
410 lbs. cast swedge and blocks, 4 c	16 40
2,866 lbs. tongs, 10 c	286 60
210 lbs. spring wrench, 8 c	16 80
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2,892 lbs. pat. swedge blocks and dies, 10 c	289 20
2 bellows, $15	30 00
2 cranes, $25	50 00
One set taps, dies and plate	40 00
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3,003 lbs. square iron, 5 c	150 15
18,165 lbs. round-iron, 5 c	908 25
772 lbs. angle iron, 6 c	46 38
293 lbs. half-round iron, 6 c	17 58
3,739 lbs. band I iron, 6 c	224 34
4,556 lbs. cast-steel iron, 20 c	911 20
1,277 lbs. forgings, 10 c	127 70
1,470 lbs. crank pins, 8 c	117 60

1,386 lbs. r'd hammered, 8 c	110 88
5,480 lbs. couplings and links, &c., 7 c	383 60
3,170 lbs. chain, assorted, 11 c	348 70
7,908 lbs. spring steel, 8 c	632 64
7,534 lbs. locomotive springs, 13 c	979 42
2,352 lbs. car, 13 c	805 76
1,361 lbs. chain bolts and keys, 8 c	108 88
82,348 lbs. scrap iron, wr't, 2 c	1,646 96
11,700 lbs. wr't shavings, ¾ c	87 75
3,589 lbs. old tires, 6 c	215 34
6,230 lbs. scrap spring and cast-steel, 3 c	186 90
Am't for'd	324,187 99
Am't bro't for'd	324,187 99

Portage City shops :

13 male and female swedges	12 00
10 heading tools	8 00
8 male and female fullers	6 00
34 pair tongs	25 00
14 punches	8 40
14 chisels	8 40
2 pair bellows	36 00
2 bench vices	16 00
1 anvil	25 00
12 fork wrenches	12 00
3 jacks	27 00
2 ratchets and drills	18 00
2 die plates, 17 taps, 12 sets dies	50 00
1 driving spring	8 00
12 files and 2 monkey wrenches	12 00
1 block and fall	50 00
7,349 lbs. iron, 5 c	367 45
107 lbs. cast-steel	21 40
50 lbs. one in. washers, 15 c	7 50
190 lbs. punched nuts, 11 c	20 90
3 sledges	4 50
27 coupling pins	14 80
2 switch rods	3 40
2 hammers, $1	2 00
21 coupling links	16 80
2 draw bars	18 60
705 lbs. spring steel, 8 c	56 40
75 lbs. scrap iron	1 00
100 lbs. old steel, 5 c	5 00
1 pair forward truck wheels	50 00
2 pair 30 in. wheel on axles	100 00
497 5 truck brasses	24 00

4 tender brasses	12 00
1½ tons coal, $9	13 50
Am't for'd	325,249 04
Am't bro't for'd	325,249 04
75 joints stove pipe	13 09
86 galls. engine oil, 80 c	68 80
43 galls. tallow	34 40
120 lbs. waste, 30 c	36 00
6 box stoves	240 00
Miscellaneous items	15 00
La Crosse shops :	
127 lbs. chisels, 2*s*	31 75
333 lbs. pinch bars, levers, fork wrenches, &c., 10 c	33 30
11 lbs. old gauge cocks, brass, 35 c	3 85
178 ft. stove pipe	23 60
26 lbs. engine truck brasses, 40 c	10 40
9 lbs. rabbet metal, 40 c	3 60
6 lbs. rubber cloth, 14 c	84
215 galls. tallow, 80 c	172 00
129 galls. engine oil, 80 c	103 20
90 lbs. wiping waste	27 00
1 pair 28 in. wheels and axles, fitted	50 00
1 bench vice, 2 jack and screws	27 00
2 monkey wrenches	4 00
Assorted files	10 00
Brooms, shovels, axes, pails, saws, hammers, sledges, lanterns, lamps, measures, &c., &c.	35 00
4,084 lbs. iron, 5½ c	224 62
1,200 lbs. old iron, 3 c	36 00
80 lbs. cast-steel, 20 c	16 00
1,600 lbs. scrap iron, 2 c	32 00
710 lbs. iron work, finished and unfinished, 10 c	71 00
1,276 lbs. bolts, nuts, &c., 11 c	140 36
8 tons coal, $9	72 00
70 lbs. heading tools, 12 c	8 40
256 lbs. swedges, 12 c	30 72
60 lbs. hammers and sledges, 12 c	7 20
384 lbs. iron tongs, 10 c	38 40
Am't for'd	326,868 57
Am't br't for'd	326,868 57
45 lbs. chisels and fullers, 18 c	8 10
3 screw plates, 18 taps, 1 ratchet drill, &c.	75 00

2 anvils, $50; 2 vices, $18; 2 bellows, $32; 1 cast anvil and block, $50	150 00
1 stove, grindstone, &c	40 00
	327,141 67
Deduct amount locomotives, page 13	270,780 73
	56,360 94
Deduct amount in La Crosse shops	1,902 63
	54,458 31
Amount bro't from page 7	32,689 03
Value of amount supplies	87,147 34

498 Inventory of wood, ties, track tools, and material on eastern division.

311 shovels, 152 picks and handles, 99 crowbars, 62 claw bars, 24 gauges, 27 adzes, 64 spiking hammers, 20 axes, 11 sledges, 7 curving hooks, 8 hand-car wheels, 1 hand-car truck, 66 tampering bars, 6 switch gates, 21 monkey wrenches, 8 fork wrenches, 105 cold chisels, 35 punches, 4 track levels, 24 water pails and dippers, 8 steel drills, 1 straightening machine, 3 kegs nails, 2,000 brick, 14 scoop shovels, 2 box rollers, 11 bush scythes, 18,660 feet crossing plank, 150 chairs, 10 kegs spike, 32 iron rails 28 ft. long, 64 iron rails 24 ft. long, 586 iron rails, old, 5,308 cross ties, 8,136 fence posts, 11,723 cords wood, 2,180 cords wood, sawed 13,903, 1,286 pounds scrap iron, 1,500 pounds cast-iron, 4 boxes glass, 10 joints stove-pipe, 1 elbow, 5 gross screws, 1 Grimshaw pump, (worn out,) 1 McGowen pump, (burst,) 225 pounds lead pipe, (old,) 1 grindstone, 1 soldering furnace, 20 pounds black paint, 150 feet matched flooring, 5 lbs. 40 c. spike.

In store, Milwaukee:

35 dozen shovels, ½ dozen scoop shovels, 1 bbl. head light oil, 1 cauldron kettle, 6 spades, 6 post augers, 7 switch chains, 30 lanterns, 1,194 feet B. M. Sq. timber 6 by 12, 8,412 feet B. M. Sq. timber 12 by 12, ½ package lamp wicking, ½ box soap, ½ dozen picks, 4 dozen pick handles, 7½ dozen axe handles, 12½ dozen hammer handles, 10½ dozen adze handles, 11 dozen brooms, 3 gallons fluid, 1 gallon turpentine, 3 3-gallon cans, 5 1-gallon cans, 9 lamp-fillers, 4 quart dippers, 4 pint dippers, 2 switch slides, 1 spike drawer, 2 oil dippers, 2 gallon measures, 2 ½-gallon measures, 2 funnels, 1 barrel car oil, 1½ dozen green lanterns, 4⅓ dozen red lanterns, 7 dozen white lanterns, 1¼ dozen adze, ½ dozen axes, ¼ dozen axes, hand.

Tools at Portage City:

2 wheelbarrows, 1 cross-cut saw, 1 carpenters' level, 1 hand hammer, iron gearing for derrick, 1 pile-driving machine, 1 pile-
499 driving horse power, 4 pile rings, 1 cast-iron stove, 8 water pails.

In quarry, Beaver Dam:

2 stone sledges, 4 shovels, (new,) 4 shovels, (old,) 4 picks and handles, 12 hand drills, 1 water pail and tin cup, 4 wheelbarrows, 25 lbs. feathers and wedges.

Inventory—furniture, stationery, &c., in stations and offices on eastern division.

Portage City station:

1 platform scale, 2 trucks, 2 old desks, 2 ticket cases, 8 chairs, 1 iron safe, 1 money drawer, 2 stoves and pipe and ash pail, 1 poker, shovel and tongs, books and stationery, 1 oil can and lamp-filler, 3 lamps, 2 lanterns, 1 clock, 1 iron bar, 2 axes, 1 beetle and 2 wedges, 1 relay register and battery.

Midland:

1 desk and stationery, 1 Herring's safe, 1 table, 2 chairs, 1 stool, 1 stove and pipe, 1 lantern, 2 kerosene lamps, 1 ticket case, 1 money drawer, 1 lantern, 1 ticket stamp and type, 2 warehouse trucks, 1 platform scale, 1 keg nails, 1 marking pot, 1 ash pail.

Cambria station:

1 desk and stationery, 1 inkstand, 1 box pens, 1 telegraph table, 1 relay register and battery, 1 office table, 2 stoves and pipe and ash pail, 6 common chairs, 2 stoves, (old,) 2 lanterns, 4 kerosene lamps, 3 oil cans, 1 ticket stamp box and type, 1 platform scale, 1 ticket case, 1 money drawer, 1 platform scale.

Randolph station:

1 desk and stationery, 1 ticket case, 1 money drawer, 1 ticket stamp and box type, 2 lanterns, 5 chairs, 1 relay register and battery, 1 oil can, 1 settee, 2 stoves and pipe, 1 warehouse truck.

Fox Lake station:

1 desk and stationery, 2 tables, 2 stoves and pipe, 1 relay
500 register, key and battery, 2 lanterns, 3 benches, 1 chair, 1 stool, 1 broom, 1 pail, 1 single desk, 1 ticket case, 1 ticket stamp and box type, 2 bracket lamps, 1 desk lamp, 2 warehouse trucks, 1 platform scale.

Beaver Dam station:

1 long office desk, 2 desks with cases, 6 common chairs, 2 kerosene lamps, 1 bracket lamp, 1 lantern, 1 office safe, 1 copy press and frame, 4 stoves and 21 lengths pipe and 6 elbows, 20 yards carpet in ladies' room, (old,) 1 sofa, (old,) 1 long settee, 1 coupon ticket case, 1 local ticket case, 1 table, 1 ticket stamp, type, &c., 3 oil cans, broom, water pail and dipper, 1 warehouse scales, 2 warehouse trucks, 1 bunk and 3 quilts, 1 money drawer, stationery, blanks, &c., 1 relay register battery, telegraph tables, &c.

Rolling Prairie station:

3 settees, 3 chairs, 2 stoves and pipe, 1 desk, bookcase, and stationery, 1 stool, 1 ticket case, 1 ticket stamp and type, 1 money

drawer, 1 kerosene lamp, 1 lantern, 1 platform scale, 1 warehouse truck, 2 oil cans.

Minnesota Junction:

1 ticket case, 1 relay register and battery, 1 copy press, 3 bracket lamps, 2 ticket stamps, 1 warehouse truck, 1 baggage truck, 1 platform scale, 1 safe, 3 stoves and pipe, 3 settees, 15 chairs, 1 carpet, 1 desk and stationery, 1 ticket stamp and type.

Horicon station:

2 desks and stationery, 1 telegraph, 1 sounder key, relay and battery, 1 ticket case, 1 ticket stamp and type, 1 office chair and cushion, 1 money drawer, 4 stoves and pipe, 1 bracket lamp, 1 kerosene lamp, 3 lanterns, 1 platform scale, 2 warehouse trucks, 1 outside lantern, 1 settee, 3 oil cans.

Iron Ridge station:

1 desk, bookcase and stationery, 2 kerosene lamps, 2 lanterns, 3 chairs, 1 stool, 2 stoves and pipe, 1 warehouse truck, 1 platform scale, 1 ticket case, 1 ticket stamp and type, 1 settee, 1 outside lantern, 1 hammer, 1 pail and dipper.

Woodland station:

1 desk, 1 bookcase and stationery, 1 ticket case, 1 relay
501 register and battery, 1 money drawer, 1 stamp and type, 2 chairs, 1 settee, 4 stoves and pipe, 2 warehouse trucks, 1 platform scale, 1 kerosene lamp, 1 lantern, 1 outside lamp, 2 oil cans, and lamp-filler.

Rubicon station:

2 settees, 2 kerosene lamps, 2 lanterns, 2 oil cans, 1 warehouse truck, 1 platform scale, 1 stove and pipe, ash pail, 1 ticket stamp and type, 1 ticket case.

Hartford station:

1 desk, bookcase, and stationery, 4 chairs, 1 stool, 1 settee, 1 relay register, key, and battery, 1 ticket case, 1 stamp and type, 1 warehouse truck, 1 platform scale, 4 oil cans, 2 kerosene lamps, 1 lantern, 1 lantern, (outside,) 2 stoves and pipe, 1 bracket lamp.

Schleisingerville:

4 desks and stationery, 1 bookcase, 1 ticket case, 1 ticket stamp and type, 1 money drawer, 1 office chair, 6 common chairs, 2 stoves and pipe, 4 oil cans, 2 kerosene lamps, 2 lanterns, 1 lantern, outside, 1 platform scale, 2 warehouse trucks, 1 bedstead, bed, and bedding.

Richfield station:

1 desk and stationery, 1 office chair, 8 common chairs, 1 telegraph table, 1 telegraph instrument and battery, 1 warehouse truck, 1 platform scale, 2 kerosene lamps, 2 lanterns, 1 lantern, outside, 2 oil cans, 1 water pail and dipper, 1 ticket case, 1 ticket stamp and type, 1 bedstead, bed, and bedding.

Granville station :

1 desk and stationery, 2 stoves and pipe and ash pan, 1 telegraph instrument, complete, 6 common chairs, 1 office chair, 1 bedstead, bed, and bedding, 1 ticket case, 1 ticket stamp and type, 2 benches, 1 lantern, 2 kerosene lamps, 2 large oil cans, 2 small oil cans.

Milwaukee gen'l freight office :

1 fire-king safe, 1 Herring's safe, 2 black walnut desks, 1 single oak desk, 1 mahogany desk, 1 small mahogany table, 1 oak table, 2 sheet-iron stoves and pipe, 1 lounge (old,) 2 W B cases, 1 copying press and table, 2 cases pigeon holes, 1 gas chandelier, 1 gas fixture, 2 burners, 4 office stools, 5 office chairs, 4 maps, 3 curtains, 2
502 carpets, 2 baskets, desk and stationery, 32 reams blanks, 11 reams blanks, mis., 500 local freight tariffs, 30 local freight on stretchers, 9 tally books, 27 impression books, 8 dray receipt books, 28 collection books, 14 mul. lindex books, 11 cash books, 6 out-frt. receipt books, 26 in-frt. books, 20 mdse. rec., books, 12 mdse. for'd books, 6 daily bal. books, 3 weekly bal. books, 28. qr. plain blank books, 16 qr. octavo blank books, 4 rms. letter paper, 3 rms. cap paper, 5 rms. note paper, 4 letter files, 3 slates, 1 doz. card cases, 1 doz. tel. reg. books, 3 doz. small mem. books, 1 doz. ink, pts., $\frac{1}{3}$ doz. ink, qts., 25,000 9-in. envelopes, 10,500 6-in. envelopes, 10,000 10-in. envelopes, 7,000 11-in. envelopes, 21,500 8$\frac{1}{2}$ in. envelopes.

Local frt. office :

52 feet desks and drawers, 2 bill cases, 7 stools, 3 arm chairs, 1 W. B. press and stand, 1 clock, 3 pa. baskets, 6 gas brackets and shades, 1 stove and pipe, 1 drum and pipe, 1 old box stove, 1 letter press, 1 desk, 1 desk, old, 1 counter and desk, cash'r office, 1 Herring safe, 1 bill case, 1 hand stamp, 1 gas chandelier, 1 gas fixture, 2 burners, 1 carpet on floor, 1 wood box, 1 platform scale.

Warehouse :

5 stoves and pipe, 3 gas brackets, 8 arm chairs, 1 stool, 41 trucks, 1 truck, (broken,) 4 platform scales, 4 canvas covers, 1 box stove and pipe, in triangle, 9 trucks.

Managers' office :

10 office chairs, 1 sofa, 1 small Berliner and B. safe, 1 walnut table, 1 walnut table, (long,) 1 R. R. stove, pipe, and zinc, 2 chandeliers, 1 wool carpet on floor, 1 matting carpet on floor, 1 sheet-iron stove and pipe, 1 mahogany desk, (small,) 7 curtains.

Cashier's office :

1 long desk and drawers, 1 oak desk, 1 table, 1 large Berliner and B. safe, 1 matting carpet, 3 curtains, 1 small case pigeon-holes, 1 chandelier, 1 stove and pipe, 1 letter press and stand, 3 chairs, wash-stand, water-cooler, &c., wood box.

Engineers' office :

1 large Ber. & Bruno safe, 1 Herring's safe, 1 long desk and drawers, 1 small desk, (bl'k walnut,) 1 case pigeon-holes, 1 cupboard,

(bl'k walnut,) 5 chairs, 1 old table, 1 letter press and table,
503 maps, land maps, &c., 1 carpet, 1 sheet-iron stove and pipe, 1 drawing table.

General ticket office:

4 desks, 2 cases drawers, 1 safe, 6 curtains and fixtures, 1 chandelier, 2 stoves and pipe, 3 tables, 1 mat carpet, 1 bulletin, 1 drop light, 1 lounge, 4 chairs, 21 bottles stamping ink, 1 letter press and table, 1 ticket safe, 2 upright cases, with tickets, 2 long cases, with tickets, 2 ticket presses, 1 eyelet machine, 1 stamp and type, 3 hand type, 1 lot local tickets, 1 gas fixture, desk and other stationery.

Telegraph office :

1 telegraph table, 2 set telegraph instruments, 2 set telegraph battery, 2 oak tables, 4 office chairs, 1 stove and pipe, 1 iron safe, (old,) 1 water-cooler, 1 floor matting, 3 window curtains, 2 gas fixtures.

Ticket office :

1 small safe, 1 ticket case, 1 chair, 1 stool.

Passenger room :

1 standard clock, 11 settees, 3 stoves, pipe, and zinc, 3 water-coolers, 3 set gas fixtures, 1 washstand and bowl.

Inventory of wood, ties, track materials, &c., on western division:

15,682 cords wood, 14,652 cross ties, 9,685 fence posts, 4,772 ft. square timber lineal, 5,000 ft. fencing, B. M., 2,000 ft. flooring, (dressed,) 140 piles.

Tools at La Crosse :

1 tool box, 7 crowbars, 1 claw, 1 sledge, 2 spike hammers, 2 chairs, 2 fork wrenches, 1 hammer, 1 belt stock, 1 oil can, 4 shovels, 2 flags, 1 grub hoe, 2 picks, 100 ft. $\frac{1}{2}$-in. rope, 100 ft. 1-in. rope, 50 ft. $\frac{3}{4}$-in. rope, 59 bars iron rails, 7 bars iron rails, 20 ft., 2 bars iron rails, 26 ft., 29 bars iron rails, 20, 8 bars iron rails, 18 bars iron rails, 4 bars iron rails, 15, 1 bar iron rail, 21, 2 bars iron rail, 16, 3 bars iron rail, 19 bars iron rail, 20, 9 iron bars, 21 ft., 2 iron bars, 6, 9 iron bars, 20 punches, 60 chisels, 21 adz, 8 wrenches, 19 axes, 15 hatchets, 6 track levels, 16 pails, 4 bush hooks, 900 lb. rail nails, 38 track bars, 32 claw bars, 42 tampering bars, 22 pinch bars, 1 hand-car wheels,
504 33 spiking hammers, 56 picks, 153 shovels, 12 flags, 3 switch targets, 3 guard rails, 5 switch ropes, 12 car springs, 3 brake screws, 91 brake hammers, 22 axe handles, 12 switch locks, 19 lanterns, 18 padlocks, 59 chains, 6 spades, 7 post augers, 8 hammers, 11 saws, 2 sledges, 14 gauges, 15 stoves, 58 lengths pipe, 9 elbows, 4 pick handles, 2 frogs, 76 bridge ties, 2 buckets, 3 wheelbarrows, 2 fall blocks, 1 hose, 12 head block chains, 18 oil cans, 128 chairs, 241 spike, (pounds,) 60 spike nails, (pounds,) 800 ft. crossing plank, 40 lbs. lead pipe, 872 lbs. bridge bolts, 2 drill springs.

Lisbon:

7 frog plates, 1 cast-iron frog, 39,900 pounds iron rails, 2,000 pounds old chairs and scraps, 45 ft. iron 1 by 2, 54 ft. iron $\frac{5}{8}$ by 2, 24 ft.

iron ½ by 2, 45 ft. iron ⅞ by 2, 132 ft. iron ¾ by 2, 45 ft. iron ¼ 0, 10 ft. iron 2 in. 0, 47 ft. iron 1 in. 0, 210 ft. iron ⅝ in. 0, 24 ft. iron, ¾ in. 0, 34 ft. iron ⅜ in. 0, 1 engine brace, 300 lbs. worked iron, 18 cold chisels, 1 fork wrench, 3 tons coal, 9 ft. 1¼ in. steel, 1 car axle broken, 17 swedges, 16 steel punches, 45 track R. R. chairs, 7 setting hammers, 5 Bolton swedges, 15 p'r tongs, 9 sledges, 1 hand-hammer, 1 anvil, 6 files, 2 fork wrenches, 1 blacksmith vice, 5 screw taps, 1 screw plate, 9 bolt tools ⅜ to 1 in., 1 steel square, 1 p'r callipers, 2 slates, 1 shovel, 1 stove, 14 lengths pipe, 1 elbow, 1 scoop shovel, 1 water pot, 1 water pot, 2 pails, 1 dipper, 1 grindstone, 1 drill machine, 3 fork wrenches, 1 rail block, 5 pokers, 1 wheelbarrow, 3 fork tongs, 2 wrenches, monkey, 1 wood barrow, 1 stove, 16 lengths pipe, 16 ft. 2 in. copper pipe, 1 lantern, 3 stoves, 46 lengths pipe, 2 pinch bars, 1 blacksmith vice, 2 brooms, 3 oil cans, 1 bbl. oil, 9 bbl. oil, empty, 1 ash tub.

In elevator, La Crosse:

505 16 new el. buckets, large, 16 new el. buckets, small, 17 old el. buckets, large, 12 old el. buckets, small, 1 pulley, 1 grindstone, 6 lanterns, 6 oil cans, 17 scoops, 6 p'r blocks, 3 brooms, 25 nails, 6 pails, 1¼ doz. elevator slides, 150 lbs. worked iron, 2 belt clamps, 4 carpenter's saw horses, 1 coal box, 4 long iron rods, 2 monkey wrenches, 400 ft. old belting, 2 gau. pipe elbows, 1 desk, 2 work benches, 1 iron sledge, 80 ft. 2 in. rope, 100 lbs. old rope, 4 car doors, 1 iron bar, 1 door and frame, 250 ft. dressed lumber, 3 ladders, 4 oil cans, 1 monkey wrench, 1 sledge-hammer, 4 files, 1 water pail, 1 stove, 4 lengths pipe, 2 elbows, 1 kerosene lamp, 100 lbs. grate bars.

Inventory of furniture on Mississippi river:

Minneapolis: 1 ticket case, 1 stamp and pad. St. Anthony: 1 ticket case, 1 stamp and pad. St. Paul: 1 ticket case, 2 office desks, 2 stoves and pipe, 1 drum and pipe, 1 platform scale, 1 letter press, 1 safe. Hudson: 1 ticket case and stamp. Hastings: 1 ticket case and stamp. Prescott: 1 ticket safe and stamp. Redwing: 1 ticket case and stamp. Lake City: 1 ticket case and stamp. Winona: 1 ticket case and stamp. Trempeleau: 1 ticket case and stamp.

Inventory of furniture, stationery, &c., in station and offices western division.

La Crosse passenger rooms:

506 3 settees, 1 sofa, 1 lamp, 1 stove and 9 lengths pipe, 1 water pail, 1 stove and 9 lengths pipe and 2 elbows, 4 settees, 1 lamp, 1 water-cooler, 2 tin cups, 20 bars soap, 8 lanterns, 9 reflector do., ½ bbl. kerosene oil, 1 bbl. head-light oil, 1 bbl. empty, 4 brooms, 1 brush, 3 coal buckets, 12 balls wicking, 6 bunches wicking, 2 oil cans, 1 coal shovel, 1 hand lamp, 7 office do., 1 box stove, 10 lengths pipe, 1 lantern, 1 baggage truck, 1 desk, 356 local checks, 1 chopping axe, 1 broom.

La Crosse station:

2 large desks, 1 local ticket case, 1 coupon ticket case and desk, 2 coal stoves, 1 wood do., 30 joint pipe, 4 elbows, 2 office stools, 4 kerosene lamps, 1 wash bowl, 1 letter press, 1 ticket stamp, 2 telegraph instruments, 1 local battery, 1 table, 1 switch rope, 1 bedstead and bedding, 5 warehouse trucks, 1 iron bar, 250 lbs. iron bolts, 1 platform scale.

Salem:

1 large desk, 1 ticket case, 1 ticket dater, 1 telegraph instrument, 1 telegraph battery, 1 telegraph stand, 1 stool, 6 chairs, new, 3 chairs, old, 2 oil lamps, 2 lanterns, 2 oil cans, 1 warehouse truck.

Bangor station:

1 desk, 3 chairs, 1 stove and 9 lengths pipe, 1 set scales, 1 truck, 1 ticket case dating press, 1 lantern, 2 oil cans, 1 lamp, outside.

Herseyville station:

1 desk, 1 ticket case, 2 box stoves, 1 dating press, 2 chairs, 1 pinch bar.

Sparta station:

1 iron safe, 2 stoves, 12 lengths pipe, 2 elbows, 1 desk, 2 chairs, 2 settees, 2 ticket cases, 2 ticket stamps, 2 inkstands and stationery, 2 lamps, 2 oil cans, 3 W. H. trucks, 1 set scales, 1 pinch bar.

Greenfield station:

1 desk, 1 ticket case, 1 ticket stamp, 1 telegraph instrument, 1 telegraph table, 1 local battery and box, 1 bunk, 5 chairs, 2 stoves, 10 lengths pipe, 4 elbows, 3 pcs. zinc, 1 tank stove and pipe, 2 kerosene lamps, 1 lantern, 2 oil cans and filler, 1 set scales, 1 set trucks, 1 axe, stationery, &c., 2 brooms.

Tomah station:

1 large desk, 1 small do., 1 ticket case, 2 chairs, 1 stool, 1 settee, 1 stove and pipe, 1 kerosene lamp, 1 lantern, outside, 1 set scales, 2 set trucks, books and stationery.

Lisbon:

507 2 settees, 9 chairs, 4 tables, 3 stoves, pipe, and zinc, 2 lamps, 1 desk, 2 tables, 2 lamps, outside, 2 lanterns, 1 water pail and dipper, 2 ticket cases, 1 ticket stamp and dating press, 2 tables, 1 telegraph instrument, 1 bedstead and bedding, 16 yards carpeting.

Lemonweir station:

1 set scales, 1 set trucks, 1 stove, 3 oil cans, 1 lantern, 1 ticket case, 1 ticket-dating stamp, stationery, &c.

Manston station:

1 double desk, 1 ticket case, 1 ticket-dating stamp, 6 chairs, 1 settee, 2 oil lamps, 2 kerosene do., 1 large outside lamp, 1 lantern, 2 oil

cans, 1 lamp-filler, 1 set platform scales, 1 set trucks, 1 pinch bar, 1 hammer, axe, and spirit level, 1 red lantern, 1 stove-pipe, 16 lengths and 2 elbows.

Lyndon station:

1 desk, 1 ticket case, 1 dating press and type, 1 settee, 1 office stool, 4 chairs, 2 stoves, 11 joints pipe, 2 elbows, 2 lamps, 3 lanterns, 2 oil cans, 1 pail, 1 inkstand, 1 reflector lantern, 1 letter clip, 1 warehouse truck, 1 paper weight.

Kilbourn City:

2 desks, 4 stoves and pipe, 1 lounge, 2 ticket cases, 11 chairs, 2 stools, 1 table, 1 telegraph instrument, (complete,) 4 oil cans, 1 wash sink and pail, 1 ticket stamp, &c., 5 lamps, 3 lanterns, 2 lanterns, (reflector,) 1 set curtains, 3 warehouse trucks, 2 sets scales, 1 crow-bar.

508 *Exhibit No.* 8.—*Statement rolling stock, La Crosse and Milwaukee Railroad Co., June* 11*th*, 1860.

Locomotives, 24; box cars, Nos. 2 to 444, less 6 used up, 216; flat cars, Nos. 1 to 239, 120; baggage cars, Nos. 1 to 6, 6; mail and express, Nos. 1 to 3, 3; second class, Nos. 1 to 2, 2; passenger cars, Nos. 1 to 18, 18.

Milwaukee, May 4th, 1865.

Exhibit No. 8, filed May 6, 1863. H. L. PALMER.

Exhibit No. 9.—*Statement rolling stock, La Crosse and Milwaukee Railroad Co., June* 11*th*, 1863.

Locomotives, 31; box cars, Nos. 2 to 900, 450; flat cars, Nos. 1 to 239, (see note,) 77; caboose cars, Nos. 1 to 6, 6; baggage cars, Nos. 1 to 9, 9; passenger cars, Nos. 1 to 20, 18.

Milwaukee, May 4th, 1865.

Exhibit No. 9, filed May 6, 1865. H. L. PALMER.

Exhibit No. 10.—*Statement.*

Flats No. 91, 63, 33, 79, 111, 103, 45, 39, 67, 51, 81, 73, 37, 61, 55, 47, 133, 135, 75, 59, 113, 69, 1, 3, 5, 9, 11, 13, 41, 131, 125, 127, 123, 139, 17, 19, 115, 87, 53, 71, 65, 99. 43 used in construction of box cars from June 11th, 1860, to June 13th, 1863. Passenger No. 5 destroyed by fire. Passenger No. 11 used up in service. Second class, Nos. 1 and 2, converted into baggage.

Milwaukee, May 4th, 1865.

Exhibit No. 10, filed May 6, 1865. H. L. PALMER.

509 *Exhibit No.* 11.—*Statement of rolling stock of the Milwaukee and St. Paul Railway Co., as follows:*

Watertown division: When purchased—locomotives, 7; passenger cars, 5; bag., mail, and express, 1; caboose, 2; freight box, 150; flat, 14; wood-sawyer's, 1.

Horicon division: When purchased—locomotives, 5; passenger cars, 3; bag., mail, and express, 2; caboose, 1; freight box, 89; flat, 40.

Milwaukee and St. Paul Railway Company built and bought since June 13th, 1863—Locomotives, 1; passenger cars, 2; bag., mail, and express, 3; freight box, 122; flat, 20.

Exhibit No. 11, filed May 6, 1865. H. L. PALMER.

510 Hans Crocker, receiver of the La Crosse and Milwaukee Railroad Company, Dr., to James S. Brown:

To professional services as attorney before the auditor in the matter of his accounts under the order of the court in this case, and advice generally in his duty as receiver since Aug., 1864	$1,500 00
To professional services in defending in circuit court of Milwaukee county case of Roth *vs.* said Crocker, as receiver	100 00
	1,600 00
Credit by cash paid on the first item	1,000 00
Balance	600 00

Exhibit No. 12, filed May 6, 1865. H. L. PALMER.

511 *Exhibit No.* 13.

The original directors of the Milwaukee and St. Paul Railway Company, as per their articles of association, were: Isaac Seymour, N. A. Cowdrey, Horace Galpen, David M. Hughes, Wm. Gould, Frederick P. James, Geo. Smith, Asahel Finch and Wm. H. White. David M. Hughes, president.

At a meeting of the directors held June 8th, 1863, the following gentlemen were elected directors, viz: Alexander Mitchell, Russell Sage, George W. Rogers and Selah Chamberlain.

At a meeting of the directors held June 25th, 1863, Wm. H. White resigned his position as director, Alfred Noxen was elected to fill and the vacancy created hereby.

At a meeting of the directors Nov. 12th, 1863, Washington Hunt was elected a director to fill the vacancy occasioned by the decease of Isaac Seymour.

At a meeting of the directors held July 1st, 1864, Russel Sage was elected president of the company to fill the vacancy occasioned by the resignation of David M. Hughes.

At a meeting of the directors held Nov. 11th, 1864, Walter S. Gurnee was elected a director to fill the vacancy occasioned by the resignation of Wm. Gould.

The foregoing are correct extracts from the records of the directors' meetings of the Milwaukee and St. Paul Railway Company.

A. CARY, *Secretary.*

Milwaukee, May 8th, 1865.

The present directors are as follows: Russel Sage, president; D. M. Hughes, S. Chamberlain, Asahel Finch, F. P. James, Alfred Noxan, Washington Hunt, Geo. W. Rogers, N. A. Cowdrey, Horace Galpen, Alex. Mitchell, Geo. Smith, Walter S. Gurnee.

Exhibit No. 13, filed May 8, 1865.

H. L. PALMER.

512 In district court of the United States, for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER & Shepherd Knapp
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company *et als.*

Exceptions taken by the defendant, the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863.

1*st exception.* For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last-mentioned court made therein in this cause on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report, this court then having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2*d exception.* For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale in this: that the said marshal having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same except by the order of the circuit court aforesaid yet the said marshal gave notice of such sale in this court only at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court and gives no notice of such sale under the said order of the said circuit court.

3*d exception.* For that the said marshal in his said report reports no legal or satisfactory evidence of having given such public notice by advertisement in any newspaper in the city of New York, as required by the said decree.

4*th exception.* For that in and by the said report of the said marshal it does not appear that the purchasers have paid to him the full amount of their bid reported by him.

5*th exception, as to the sale of the lands ordered to be sold by the decree in this cause.* For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specified tract or tracts of land, or land by any description by which the land sold was

Horicon division: When purchased—locomotives, 5; passenger cars, 3; bag., mail, and express, 2; caboose, 1; freight box, 89; flat, 40.

Milwaukee and St. Paul Railway Company built and bought since June 13th, 1863—Locomotives, 1; passenger cars, 2; bag., mail, and express, 3; freight box, 122; flat, 20.

Exhibit No. 11, filed May 6, 1865. H. L. PALMER.

510 Hans Crocker, receiver of the La Crosse and Milwaukee Railroad Company, Dr., to James S. Brown:

To professional services as attorney before the auditor in the matter of his accounts under the order of the court in this case, and advice generally in his duty as receiver since Aug., 1864	$1,500 00
To professional services in defending in circuit court of Milwaukee county case of Roth *vs.* said Crocker, as receiver	100 00
	1,600 00
Credit by cash paid on the first item	1,000 00
Balance	600 00

Exhibit No. 12, filed May 6, 1865. H. L. PALMER.

511 *Exhibit No.* 13.

The original directors of the Milwaukee and St. Paul Railway Company, as per their articles of association, were: Isaac Seymour, N. A. Cowdrey, Horace Galpen, David M. Hughes, Wm. Gould, Frederick P. James, Geo. Smith, Asahel Finch and Wm. H. White. David M. Hughes, president.

At a meeting of the directors held June 8th, 1863, the following gentlemen were elected directors, viz: Alexander Mitchell, Russell Sage, George W. Rogers and Selah Chamberlain.

At a meeting of the directors held June 25th, 1863, Wm. H. White resigned his position as director, Alfred Noxen was elected to fill and the vacancy created hereby.

At a meeting of the directors Nov. 12th, 1863, Washington Hunt was elected a director to fill the vacancy occasioned by the decease of Isaac Seymour.

At a meeting of the directors held July 1st, 1864, Russel Sage was elected president of the company to fill the vacancy occasioned by the resignation of David M. Hughes.

At a meeting of the directors held Nov. 11th, 1864, Walter S. Gurnee was elected a director to fill the vacancy occasioned by the resignation of Wm. Gould.

The foregoing are correct extracts from the records of the directors' meetings of the Milwaukee and St. Paul Railway Company.

A. CARY, *Secretary.*

Milwaukee, May 8th, 1865.

The present directors are as follows: Russel Sage, president; D. M. Hughes, S. Chamberlain, Asahel Finch, F. P. James, Alfred Noxan, Washington Hunt, Geo. W. Rogers, N. A. Cowdrey, Horace Galpen, Alex. Mitchell, Geo. Smith, Walter S. Gurnee.

Exhibit No. 13, filed May 8, 1865.

H. L. PALMER.

512 In district court of the United States, for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER & Shepherd Knapp
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company *et als.*

Exceptions taken by the defendant, the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, to the report of D. C. Jackson, esq., marshal of the United States for the said district, of the sale of the mortgaged premises in this cause reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863.

1*st exception.* For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last-mentioned court made therein in this cause on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report, this court then having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2*d exception.* For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale in this: that the said marshal having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same except by the order of the circuit court aforesaid yet the said marshal gave notice of such sale in this court only at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court and gives no notice of such sale under the said order of the said circuit court.

3*d exception.* For that the said marshal in his said report reports no legal or satisfactory evidence of having given such public notice by advertisement in any newspaper in the city of New York, as required by the said decree.

4*th exception.* For that in and by the said report of the said marshal it does not appear that the purchasers have paid to him the full amount of their bid reported by him.

5*th exception, as to the sale of the lands ordered to be sold by the decree in this cause.* For that the said marshal shows in and by his said report that he did not offer for sale or sell any known or specified tract or tracts of land, or land by any description by which the land sold was

capable of being identified, or land by any description of which a title would pass in a deed of conveyance, but did offer for sale an uncertain, vague and undefined claim of title to all the lands granted or intended to be granted to the La Crosse and Milwaukee Railroad Company under the acts of Congress and of the State legislature mentioned in the pleadings, without making it appear whether the said railroad company had acquired any and what title to any and what quantity of such lands, and what lands.

513 6*th exception as to the sale of the lands ordered to be sold by the decree in this cause.* For that the said marshal, having so offered for sale and sold such lands by a description calculated to deter bidders thereon, so sold the same for a grossly inadequate price.

7*th exception as to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.* For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and of the incumbrances thereon, and as to the extent and nature of the franchises appurtenant to the railroad so sold.

8*th exception as to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.* For that the said marshal so offered for sale and sold the said railroad and its appurtenances under a decree of this court, which does not determine or settle the franchise or right of possession to be acquired by the purchaser of the premises or to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

9*th exception.* For that the said marshal reports that he offered for sale and sold the said railroad and its appurtenances and franchises, and the said lands granted by the said acts of Congress and of the State legislature, separately; whereas the lands so sold, and the right of the said railroad company thereto or to a great part thereof, are incident to the franchises so separately sold, and cannot pass to a purchaser unless with the franchise and as an incident thereto. And the said defendants further object to any confirmation of said sale because by rule 6 of the rules of practice for the courts of equity of the United States, prescribed by the Supreme Court of the United States, it is provided as follows: "All motions for rules or orders and other proceedings which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule day and entered in the order book, and shall be heard at the rule day next after that on which the motion is made;" and because no motion for order confirming said sale has been made on a rule day or on any other day assigned by the judge of said court for that purpose; and because the time prescribed by said rule for the defendants to make objection and exceptions to said report has not elapsed, and will not elapse till the next rule day after the rule day on which the motion may be made according to said rule dated May 2, 1863.

11. That the said lands sold for only a nominal sum in consequence

of the opinion of the judge of this court heretofore printed by him, as follows:

(Here follows the printed opinion.)

MAT. H. CARPENTER,
Solicitor for said Defendants.

Exhibit No. 14, filed May 8, 1865. H. L. PALMER.

514 And afterwards, on the 6th day of May, 1863, came Mr. Cary, on behalf of the Milwaukee and St. Paul Railway Company, and filed its petition in writing as follows, to wit:

Petition of Mil. & St. Paul Railway Company for possession of whole road, and order of court May 7, 1863, for joint occupancy.

United States district court for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND Shepherd Knapp, trustees,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company *et als.*

Not parties
Curtis &

To the Hon. Andrew G. Miller, district judge:

Your petitioner, the Milwaukee & St. Paul Railway Company, respectfully shows, that it is a corporation duly organized by William Wallace Pratt and William H. White, the purchasers of the La Crosse and Milwaukee railroad and its appurtenances at the marshal's sale, under the decree of this court in this cause, by virtue and in pursuance of chapter seventy-nine of the revised statutes of the State of Wisconsin concerning railroads; that in pursuance of said sale, and the confirmation thereof by this honorable court, Darius C. Jackson, the said marshal of the United States for the district of Wisconsin, on the fifth day of May, instant, executed and delivered to said William Wallace Pratt and said William H. White a deed of said mortgaged premises; that immediately thereafter said purchasers, William Wallace Pratt and William H. White, organized your petitioner as a corporation under and by virtue of the provisions of said chapter seventy-nine of the revised statutes of Wisconsin, concerning railroads, and on the said fifth day of May, instant, filed their articles of association in the office of the secretary of state of the State of Wisconsin, a certified copy of which said articles of association are herewith shown to this court, and to which your petitioner prays leave to refer; that afterwards, on the sixth day of May, instant, the said William Wallace Pratt and William H. White, under their hands and seals, executed and delivered to your petitioner, in due form of law, a deed of all and singular the said mortgaged premises conveyed to them by the said Darius C. Jackson, marshal as aforesaid, which said deed is herewith shown to this honorable court, and to which, for greater certainty, your petitioner prays leave to refer.

And your petitioner further shows that Hans Crocker was appointed he receiver in this suit of said mortgaged property, and took possession thereof on the 11th day of June, in the year 1860; and your pe-

titioner shows that the purposes for which he was appointed have been answered, and the duties of his office (save accounting and
515 being discharged) are at an end in consequence of a sale of the said mortgaged premises under the decree on this suit.

Your petitioner further shows that said Hans Crocker, receiver of said mortgaged premises, is also the receiver of the eastern division of the said La Crosse and Milwaukee railroad, to wit, from the city of Milwaukee to Portage City, appointed under certain judgment creditor's bills filed against said La Crosse and Milwaukee Railroad Company, and also against the Milwaukee and Minnesota Railroad Company, and also in the foreclosure suit of Bronson and Soutter against said La Crosse and Milwaukee Railroad Company and others; that, as your petitioner is informed and believes, the mortgage of the franchise of the said La Crosse and Milwaukee Railroad Company to the said complainants, described in the bill of complaint in this cause, is a mortgage of the entire franchise to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length, from the city of Milwaukee to the city of La Crosse; and that the said mortgage is prior and superior to all the liens, claims, and incumbrances on said eastern division, by virtue of which said Hans Crocker, as such receiver, now holds and operates such eastern division of said road; that by the foreclosure of the said complainants' said mortgage in this case, the sale and confirmation under said decree, the conveyance of the marshal to said William Wallace Pratt and William H. White, the purchasers at said sale, the organization of your petitioner by said purchasers under and by virtue of the provisions of chapter seventy-nine of the revised statutes of Wisconsin, concerning railroads, and the conveyances by said purchasers to your petitioner of all and singular the said mortgaged premises, your petitioner has succeeded to all the rights, privileges, franchises, and immunities of the original La Crosse and Milwaukee Railroad Company in running, operating, and controlling said railroad in its entire length from the city of Milwaukee to the city of La Crosse, and that such right so to run, operate, manage, and control the same is prior and superior to the rights of any of the defendants in this cause, and prior and superior to the rights of the mortgagees in the mortgage to said Greene C. Bronson and James T. Soutter on the eastern division, under which said Hans Crocker is acting as receiver, inasmuch as the said mortgage to the said complainants is prior in date and lien to the mortgage to said Greene C. Bronson and James T. Soutter.

And your petitioner is informed and believes that it is entitled, in virtue of the premises, to the possession, control, and management of the entire line of said railroad, from the city of Milwaukee to the city of La Crosse, and to run, operate, manage, and control as a railroad the whole line of said road, subject to the obligation to account and pay over to said receiver the net earnings and income of said eastern division under the order and direction of this honorable court.

Your petitioner therefore prays that your honor will grant an order directing the said Hans Crocker, receiver as aforesaid, to deliver to

your petioner all and singular the said railroad from the city
516 of Milwaukee to the city of La Crosse, its road-bed, track, and locomotives, engines, rolling stock, tools, implements, supplies, together with its depots, station-houses, engine-houses, and all other property belonging to said railroad, or used in operating the same, now in the possession of or subject to the control of said receiver, together with its appurtenances, rights, and franchises thereto appertaining, and that your petitioner be let into the possession and enjoyment thereof; your petitioner hereby offering to account to said receiver for the net tolls and income of said eastern division under the direction and supervision of this honorable court, and to submit to such rules and regulations in respect thereto as this honorable court shall make and establish, and for such further and other order as the court may see fit to grant. And your petitioner will ever pray, &c.

MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

Exhibit No. 15, filed May 8, 1865. H. L. PALMER.

DISTRICT OF WISCONSIN, *ss:*

David M. Hughes, being duly sworn, deposes and says that he is the president of the Milwaukee and St. Paul Railway Company; that he has heard read the foregoing petition of the Milwaukee and St. Paul Railway Company, signed by said company; that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matter stated therein on information and belief, and as to those matters he believes it to be true.

D. M. HUGHES.

Sworn to before me, May 6, 1863.

J. M. MILLER, *Clerk.*

And afterwards, on the 7th day of May, 1863, came the Milwaukee and Minnesota Company, and Graham and Scott, by Mr. Carpenter, their solicitor, and filed the following, to wit:

Objection to hearing the petition of St. Paul Company.

In district court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
vs.
THE LA CROSSE AND MILWAUKEE Railroad Company and others.

The Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, come and object to any hearing of the petition of the Milwaukee and St. Paul Railway Company, filed May 6, 1863, until the same is reached according to rule 6 of rules prescribed by the Supreme Court for practice in the courts of equity of the United States.

MAT. H. CARPENTER, *Solicitor.*

Whereupon, it is ordered by the court, (Mr. Carpenter,) on behalf of the Milwaukee and Minnesota Railroad Company, (Mr. Ryan, on behalf of William Crawshay and Orville Oddie, objecting,) that the receiver deliver over to the Milwaukee and St. Paul Railway Company the said railroad and appurtenances, between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

And it is further ordered by the court, that a full and per-
517 fect inventory be taken by the receiver of all rolling stock, other than the forty box cars specially mentioned in the decree, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as has been purchased by the receiver and now on hand, and that he make report of the same on the eighth day of June next.

And as, in pursuance of the act incorporating the La Crosse and Milwaukee railroad, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interests of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court (reserving the right to rescind, change, or modify this order at any time hereafter) that the said Milwaukee and St. Paul Company and the receiver, who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee railroad, between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company and the said receiver employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenues and to be charged its proportion of disbursements, and that the said receiver pay coupons of bonds on prior mortgages as heretofore.

May 7, 1863. The court then adjourned until Tuesday, the ninth day of June next, at ten o'clock in the forenoon.

A. G. MILLER.

May 20, 1863. Receiver's report for month of April, 1863, filed. June 10th, 1863. Receiver's inventory and report accompanying same filed.

(The above entry appears of record, but no such paper appears of record or on file among the papers.)

And afterwards, on the 11th day of June, 1863, came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed an answer to the petition of the Milwaukee and St. Paul Railway Company for possession, &c., as follows, to wit:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, *vs.* THE LA CROSSE AND MILWAUKEE RAILroad Company and others, def'ts. } In equity.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause to the petition of the Milwaukee and St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863.

518 These defendants, saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiencies of said petition, and protesting that this court has no jurisdiction to hear said petition, for answer thereunto or unto so much and such part thereof as is or are material to be by them answered unto, answering, says: That they have no knowledge, information, remembrance or belief as to whether the said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave said petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is receiver of the eastern division. so called, of the Milwaukee and La Crosse railroad, so called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of said Bronson and Soutter as complainants, against the La Crosse and Milwaukee Railroad and others, defendants, which action was a writ in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last-named company and others.

These defendants deny that the said mortgage, mentioned in the bill of complaint in this cause, mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company, to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or incumbrances on said eastern division, and state that said mortgage did not in terms nor was it intended to create any lien or incumbrance whatever upon said eastern division of said railroad or the franchise of said La Crosse and Milwaukee Railroad Company, to use, manage, operate, and control said eastern division, but that, on the contrary thereof, the premises as to franchises conveyed in said mortgage are conveyed only by the following words and description, that is to say, "and all and singular the rights, liberties, privileges, and franchises of said railroad company of any kind or description relating to said roads," meaning the following roads, that is to say, from Madison by way of Portage City to the St Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse. And these defendants deny that said petitioner has in any way become entitled to use, manage, or operate

said eastern division of said railroad from Milwaukee to Portage or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage any of the rolling stock of said La Crosse and Milwaukee Railroad Company pertaining to said eastern division; and these defendants submit that rolling stock is not franchise; and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the said mortgage unless it be the 40 box cars mentioned in the order of the court upon the master's report.

M. H. CARPENTER, *Solicitor.*

519 DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf; that he has heard read the foregoing answer and knows its contents, and that the same is true of his own knowledge.

A. FLEMING.

Subscribed and sworn to before me this 7th day of May, A. D. 1863.

J. M. MILLER, *Clerk.*

Re-sworn to before me this 11th day of June, A. D. 1863.

EDWIN KURTZ, *U. S. Com., Dist. Wis.*

And on the same day came the Milwaukee and Minnesota Railway Company, and Lawrence G. Graham and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and others.

Here in court comes the said Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, and protesting that the rights of the parties as to rolling stock is already res adjudicata between the parties to this suit, and that this court has no jurisdiction over or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth. Pray that in case said court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock claimed in said petition is not already res adjudicata as aforesaid, that it may be referred to a master or masters to take proofs as to the matters and things set forth or the rights claimed in and by said petition to and report thereon.

MATT. H. CARPENTER, *Solicitor for said Defendants, above named, except said La Crosse and Mil. Railroad Co.*

526 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity, before H. L. Palmer, auditor.

It is hereby stipulated that the record in this cause shall be considered as in evidence for all purposes before said Palmer, auditor, and may be referred to with the same effect as though here and now introduced in evidence.

2. That the record in the cause pending some time in said court in favor of Nathaniel S. Bouton, complainant, against the La Crosse and Milwaukee Railroad Company, and the Milwaukee and Minnesota Company, may be considered as in evidence before said Palmer, and may be referred to by either party on the hearing before said Palmer, and on exceptions to his report, if any exceptions shall be taken thereto, with the same effect as though the same, duly authenticated, were here and now introduced in evidence before said Palmer, and copy thereof, that is of the last-named record, may be filed in this cause at any time as part of the testimony before said Palmer, and be so considered, either party having right to urge any objection to the materiality of the said records or any part thereof, dated May 9, 1865.

MATT. H. CARPENTER, *Sol'r for Def'ts.*

The meaning of the foregoing stipulation is this:

(1.) The record in this cause will, of course, go up and be printed if this case goes to the Supreme Court, so far as is necessary to show the merits of this matter of dispute.

(2.) The record in the Bouton cause may at any time be filed in this cause as testimony introduced before said Palmer, and thus be a part of the record to go up and be printed in the Supreme Court if this cause ever goes there again.

M. H. CARPENTER, *Sol'r for Def'ts.*
JAMES S. BROWN, *for Receiver.*
CARY & PRATT, *Sol'rs for the St. P. R'y Co.*
THOMAS L. OGDEN, *Sol'r for Compl'ts.*

Exhibit No. 16, filed May 7, 1865.

H. L. PALMER.

Exhibit No. 17, filed May 9, 1865, is a printed copy of the following case, viz: Supreme Court of the United States—No. 243. The Milwaukee and Minnesota Railroad Company, appellants, *vs.* Charles Howard. Appeal from the circuit court of the United States for the district of Wisconsin.

Exhibit No. 18, filed May 9, 1865, is a printed copy of the following case, viz: Supreme Court of the United States—No. 279. The Milwaukee and Minnesota Railroad Company, appellants, *vs.* James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, dec'd, *et al.* Appeal from the circuit court of the United States for the district of Wisconsin.

521 *Opinion of Supreme Court on supplemental bill.*

Supreme Court United States, No. 279—December term, 1864.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, appellants, *vs.* JAMES T. SOUTTER, survivor, &c. } Appeal from the circuit court of the United States for the district of Wisconsin.

Mr. Justice Miller delivered the opinion of the court.

In the circuit court a demurrer was sustained to the bill, and the bill dismissed, from which decree the present appeal was taken.

The first question raised by the demurrer relates to the jurisdiction of the federal courts over the case. The complainant in the present bill is a corporation, organized under the laws of Wisconsin, and located in that State. The Milwaukee and St. Paul Railway Company, one of the defendants, is in like manner a corporation of that State, and Pratt and White, two other defendants, are also citizens of Wisconsin.

It being obvious that the suit cannot be maintained on the ground of citizenship of the parties, the appellant relies upon the
522 subject-matter of his bill to bring the case within the jurisdiction of the courts. The main facts on which the jurisdiction must depend, as set forth in the bill, may be stated thus:

The present defendants, James T. Soutter and Shepherd Knapp, together with Greene C. Bronson, who is since dead, were trustees and grantees in a mortgage made by the La Crosse and Milwaukee Railroad Company on that part of their road between Portage City and the Mississippi river, and on the rolling stock and other appurtenances properly belonging to that division of said road. The same company shortly afterwards made to William Barnes a mortgage on all their road from La Crosse to Milwaukee, and on all the rolling stock belonging to said company, including both the eastern and western divisions of the road. This latter mortgage was foreclosed by a statutory proceeding, and the Milwaukee and Minnesota Railroad Company became the purchaser and owner of the equity of redemption of all the road, rolling stock, and franchises of the La Crosse and Milwaukee Railroad Company. Shortly after this, Bronson, Soutter and Knapp, trustees in the mortgage of the western division, filed their bill in chancery in the district court of the United States for the district of Wisconsin to foreclose their mortgage, and had a decree, under which the western division was sold, and also all the rolling stock of the company belonging to both divisions of the road, to the Milwaukee and St. Paul Railway Company.

The Milwaukee and Minnesota Company was made defendant in that suit, but did not answer; the district court confirmed the sale of the marshal, and delivered to the Milwaukee and St. Paul Company all said stock, and that company now has possession of it under the order of the district court.

It is alleged in the bill in the present suit that the mortgage to Bronson, Soutter and Knapp did not cover a large part of this rolling stock—over half a million of dollars in value; that the decree

of the court did not order it to be sold, and that the district court only placed it in possession of the Milwaukee and St. Paul Railway Company, as it did the eastern division of the road, for the purpose of enabling that company to run the road from Milwaukee to La Crosse as one road. That notwithstanding this, the Milwaukee and St. Paul Company claim to own all the rolling stock of the road, and are carrying it to other and rival roads, which they own, and using it, to the prejudice of complainant and to the destruction of the interests of the eastern division of the road.

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For the purposes of this question we are to take all the facts thus set up to be true, and consider whether they make a case for the jurisdiction of the circuit court of the district of Wisconsin, which has become the successor of the district court in that district.

The present suit grows immediately out of and is a necessity which arises from the foreclosure suit, and is really a continuation of it. The rights of the parties depend upon the construction which is placed upon the acts of the court in that suit; and the present bill is necessary in order to have a declaration of what was intended by the orders and decrees made in that suit, and to enforce the rights which were established by it.

The road and rolling stock, which are the subject-matter of this controversy, were placed in the hands of a receiver in the progress of that suit, and he was in possession of the rolling stock, when, by an order of the district court, made June 12th, 1863, in that suit, and a similar order of the same date, in another suit, it was all delivered to the Milwaukee and St. Paul Railway Company.

At the last term of this court in the case of Bronson *vs.* La Crosse Railroad Company, 1 Wallace, 405, we decided that by the act creating the circuit court for the district of Wisconsin, the district court lost its power to make such orders, and that they were void. The consequence of this ruling is, that in contemplation of law this property is still in the hands of the receiver of the court.

If in the hands of the receiver of the circuit court, nothing can be plainer than that any litigation for its possession must take place in that court, without regard to the citizenship of the parties. (Freeman *vs.* Howe, 24 Howard, 460.) If it has been taken illegally from the custody of the receiver, it is equally clear that the court has not lost thereby the jurisdiction over the property, or the right to determine where it shall go, so far as that right is involved in that suit. This is the very object of this bill, and it is rendered all the more necessary by that which the court has done, as well as that which it has failed to do.

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In the case of Randall *vs.* Howard, 2 Black.. 585, these principles are fully stated as applicable to a proceeding in a State court, and are given as reasons why the federal court would not interfere, although the parties had the right, so far as citizenship could give it, to litigate in the courts of the United States.

It is objected that the present bill is called a supplemental bill, and is brought by a defendant in the original suit; which is said to be a violation of the rules of equity pleading; and that the subject-

matter, and the new parties made by the bill, are not such as can properly be brought before the court by that class of bills.

We think that all the exhaustive research brought to bear on this technical question of equity pleading, while creditable to the counsel on both sides, is useless in the present case. It is not a question whether the proceeding is supplemental and ancillary, or is independent and original in the sense of the rules of equity pleading; but whether it is supplemental and ancillary, or is to be considered entirely new and original, in the sense which this court has sanctioned, with reference to the line which divides the jurisdiction of the federal courts from that of the State courts.

No one, for instance, would hesitate to say that, according to the English chancery practice, a bill to enjoin a judgment at law is an original bill, in the chancery sense of the word. Yet this court has decided many times that when a bill is filed in the circuit court to enjoin a judgment of that court, it is not to be considered as an original bill, but as a continuation of the proceeding at law; so much so, that the court will proceed in the injunction sent without actual service of subpœna on the defendant, and though he be a citizen of another State, if he were a party to the judgment at law.

The case before us is analogous. An unjust advantage has been obtained by one party over another by a perversion and abuse of the orders of the court, and the party injured comes now to the same court to have this abuse corrected, and to carry into effect the real intention and decree of the court, and that while the property which is the subject of contest, is still within the control of the court and subject to its order.

525 It is objected that Pratt and White and the Milwaukee & St. Paul Railway Company were not parties to that suit, and cannot, therefore, be compelled to yield their right to litigate with a citizen of Wisconsin in the courts of that State.

Pratt and White are mere nominal parties, who were the agents and attorneys of the corporators composing the Milwaukee and St. Paul Railway Company, and purchased the property at the marshal's sale for them. They, and the company, may both be considered as purchasers at that sale, and it is in their character of purchasers, and on account of the possession which they obtained on petition of the company, and the rights they claim under that purchase, that they are now brought before the court. If the court has jurisdiction of the matters growing out of that sale and order of possession, as we have already shown that it has, then it has jurisdiction to that extent of these parties, without regard to their citizenship. It would, indeed, be very strange if these parties can come into court by a petition and get possession of that which was the subject of litigation, and then, when the wrong they have done by that proceeding is to be corrected, they shall be permitted to escape by denying that they were parties to the suit.

In the case of Blossom *vs.* The Milwaukee & Chicago Railroad Company, 1 Wallace, 665, this matter was fully discussed, and it was there held, that a purchaser or bidder at master's sale subjected him-

self *quo ad hoc* to the jurisdiction of the courts, and became so far a party to that suit by the mere act of making a bid, that he could appeal from any subsequent order of the court affecting his interest. (De la Plaine *vs.* Lawrence, 10 Paige, 602; Calvert on Parties to Suits in Equity, pages 51, 58, and note to page 61.)

The objection to the jurisdiction must therefore be overruled.

We next proceed to inquire whether the bill makes a case calling for relief. This involves the consideration of the mortgage of complainants in the original suit, and of several orders and decrees of the district court, all of which are the subject of conflicting constructions by the parties and their counsel.

526 A preliminary statement of a few facts may assist us in the solution of these difficulties.

The La Crosse and Milwaukee Railroad Company was chartered originally to build a road from Milwaukee to La Crosse, and commenced the work at Milwaukee, proceeding westward. The legislature of Wisconsin added the right to build other roads connecting with this, and also gave them the right to mortgage any particular division of their road separately for the purpose of raising money. Under this latter provision of the statute the company appears to have divided the main road into two divisions, nearly equal in length, the eastern division extending from Milwaukee to Portage City, ninety-five miles, and the western division from Portage to La Crosse, one hundred and five miles. On the 30th of June, 1854, the company made and delivered to Francis A. Palmer, as trustee, a mortgage on the eastern division, commonly called its first mortgage, for $900,000; on the 31st December, 1856, it made a mortgage to Bronson, Soutter, and Knapp, trustees, which is the foundation of the original suit in this case, for several millions dollars, covering the western division, commonly called the land grant mortgage; and on the 17th August, 1857, it made to Greene C. Bronson and James T. Soutter, trustees, a second mortgage on the eastern division for $1,000,000.

We have already seen that after all these the company made the Barnes mortgage, which was first foreclosed, under which complainant in this bill became by purchase owner of the equity of redemption of all the road, its franchises, rolling stock, and realty.

In reference to the road-bed, which is covered by these various mortgages, there is no diversity of opinion; but in reference to the rolling stock, it is contended by the appellees that these several mortgages were successive liens only on the rolling stock of the company, and by appellant that they are liens only ont he rolling stock belonging to, or in some way identified with, that part of the road included in each mortgage respectively. At first blush it would seem that in a road used continuously as one road there could be no such definite relation between any particular division of the road

527 and any particular portion of the stock. But as it was competent for the company which owned all the road, and all the stock, to assign certain stock to one division, and certain other stock to the other division, when the road was divided for the purpose of making mortgages, we cannot assume as a fact that there was no such

division of the rolling stock, but must look to the language of the mortgages themselves, to see if any such intention is expressed. If it is not, then obviously the other view prevails, and the mortgages are successive liens on the whole stock.

The descriptive part of the Palmer mortgage is in the following words:

"All their said road, from its eastern terminus, in the city of Milwaukee, to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied, or so to be, for right of way within the limits aforesaid, together with bridges, fences, privileges, rights and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the and all lands used for and occupied within the limits aforesaid by depots and stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shop, tools and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed or to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining."

The corresponding part of the mortgage on the western division is as follows:

"All and singular the several tracks, pieces or parcels of land which now are, or may hereafter be or constitute, the site of the roadway, turn-outs, engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said roads, 528 whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them; and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads."

The language thus quoted has been the subject of much minute criticism on both sides, and when considered in reference to the rolling stock above, may not be free from doubt as to its construction. But when we consider it in reference to the clear purpose of the parties to make the mortgages distinct, and different as to anything else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road.

It is not so important that we be right in this, however, as we are satisfied that the district court in the foreclosure suit decided this

question, and as that decision is in full force and unreversed, it must conclude the parties to the present suit, all of whom claim under the decree of the court.

The complainants in the original foreclosure suit made defendants of all the judgment creditors of the company, who had liens subsequent to themselves, and made the Milwaukee and Minnesota Company defendant, who held under the subsequent mortgage to Barnes, with a view to cut off their equity of redemption; but they did not make defendants, of Bronson and Soutter, who held a subsequent mortgage on the eastern division, and a subsequent lien on the rolling stock, which complainants would also desire to extinguish, if they had believed it covered the same rolling stock which theirs did. By omitting these mortgagees they show their own construction that their mortgage, and that of Bronson and Soutter, did not cover the same stock, which could only be because it was appurtenant to the eastern division.

529 About the time that foreclosure suit was commenced, a suit was instituted in the same court to foreclose the second or Bronson & Soutter mortgage on the eastern division, but the holders of the Palmer mortgage were not made defendants to either suit. They progressed *pari passu* to a final decree; but while the western division went to sale, an appeal stayed proceedings in the eastern division case, and no sale has yet been made under that decree. Very shortly after these suits were commenced the court made an order of reference in each of them to masters in chancery, who were the same masters in both cases. These references were for the purpose of ascertaining the amounts due on the bonds, the amounts due certain judgment creditors, and the amount of rolling stock on the whole road, and the amount included in each mortgage. The language of the order of reference on this latter point in the original suit in this case is as follows: "And it is further ordered that said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by this mortgage, also in the first and second mortgages respectively." The reference in the other case is in language almost identical with this.

Now it is claimed that the object of this order was to ascertain and settle the priorities between these different mortgages. No such inference can be made from its language, for it says nothing about priorities in date, or superiority of lien. There was no occasion or reason for ascertaining those priorities in that suit, for the respective parties were not before the court, and could not be bound by its decree. It would not even bind complainants, because there could be no mutuality in the estoppel. It is an impeachment of the legal attainments of the court and of the counsel to suppose that they would make a reference to a master to ascertain a fact which could have no influence on the suit, and if passed over by the court could affect nobody's interest in the slightest degree.

But the language of the order clearly implies a very different thing. The object manifestly is to ascertain what is covered by one mortgage to the exclusion of the other; an object which had manifest

530 pertinency to the duty which the court was called upon to

division of the rolling stock, but must look to the language of the mortgages themselves, to see if any such intention is expressed. If it is not, then obviously the other view prevails, and the mortgages are successive liens on the whole stock.

The descriptive part of the Palmer mortgage is in the following words:

"All their said road, from its eastern terminus, in the city of Milwaukee, to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied, or so to be, for right of way within the limits aforesaid, together with bridges, fences, privileges, rights and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the and all lands used for and occupied within the limits aforesaid by depots and stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shop, tools and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed or to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining."

The corresponding part of the mortgage on the western division is as follows:

"All and singular the several tracks, pieces or parcels of land which now are, or may hereafter be or constitute, the site of the roadway, turn-outs, engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said roads,
528 whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them; and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads."

The language thus quoted has been the subject of much minute criticism on both sides, and when considered in reference to the rolling stock above, may not be free from doubt as to its construction. But when we consider it in reference to the clear purpose of the parties to make the mortgages distinct, and different as to anything else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road.

It is not so important that we be right in this, however, as we are satisfied that the district court in the foreclosure suit decided this

question, and as that decision is in full force and unreversed, it must conclude the parties to the present suit, all of whom claim under the decree of the court.

The complainants in the original foreclosure suit made defendants of all the judgment creditors of the company, who had liens subsequent to themselves, and made the Milwaukee and Minnesota Company defendant, who held under the subsequent mortgage to Barnes, with a view to cut off their equity of redemption; but they did not make defendants, of Bronson and Soutter, who held a subsequent mortgage on the eastern division, and a subsequent lien on the rolling stock, which complainants would also desire to extinguish, if they had believed it covered the same rolling stock which theirs did. By omitting these mortgagees they show their own construction that their mortgage, and that of Bronson and Soutter, did not cover the same stock, which could only be because it was appurtenant to the eastern division.

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But the language of the order clearly implies a very different thing. The object manifestly is to ascertain what is covered by one mortgage to the exclusion of the other; an object which had manifest

530 pertinency to the duty which the court was called upon to

discharge. The judge who made these orders delivered an opinion at the trial, in which he decides that the rolling stock of a railroad is a fixture; and if we suppose him to have considered that which was mortgaged to Palmer and to Bronson and Soutter as a fixture on the eastern division, and that which was mortgaged to Bronson, Soutter and Knapp as a fixture in the western division, we have a clear idea of what he wished to ascertain in view of the decrees he was to make in the two suits.

We have next the report of the master on this subject, which is in the following words:

"We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty-nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623.235 78.

"And we have ascertained, and do further report, that of the said rolling stock forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 368, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406 and 408, are covered by and included in the mortgage executed to the complainants, as set forth in the bill of complaint in this cause, the said cars having been purchased, and by the proceeds of a portion of the bonds to which this mortgage is collateral; and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857."

In the foreclosure suit of the eastern division the same masters reported on the same day that "we have ascertained, and do further report, that of said rolling stock forty box cars, amounting, at cost price thereof, to $31,779 64, and numbered 330 and so on, are covered by and included in the mortgage of Greene C. Bronson.
531 James T. Soutter and Sheppard Knapp, and no other;" and then adds that the remaining rolling stock is covered by the mortgage to Palmer and to Bronson and Soutter; that is, the mortgage on the eastern division.

It is impossible, in examining these reports, to doubt that the commissioners understood that they were directed to ascertain what rolling stock was covered by each mortgage, in order that only such might be sold under the decree in that case, and that they reported that of all the rolling stock on the road, forty box cars alone were subject to the mortgage in the present case, and that all the other stock was subject to the mortgage in the other suit. At all events, they were directed to ascertain what was subject to the mortgage in this suit, and they reported the forty box cars and did not report any more.

This much is beyond dispute, from the language of the report in this case.

Counsel for the complainant excepted to this report. His fourth exception is that instead of certifying as they did, the masters should have reported, "that all the rolling stock on said road was covered by and included in the mortgage given to said complainants, and described in their bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens." This exception was overruled by the court, and the report of the masters confirmed, so far as this branch of the subject is concerned.

We regard this as a judicial decision that complainant's mortgage did not cover the rolling stock which was covered by the previous mortgage to Palmer, and that it only covered the forty box cars, and such proportion of the rolling stock purchased by the receiver as the net earnings of the western division bears to the net earnings of the eastern division. This order modifying and confirming the report of the masters settled the rights of the parties, and by that decision they must stand until it is reversed on appeal or set aside by some direct proceeding for that purpose.

The final decree ordering the sale proceeds upon the same view of the rights of the parties. After ordering a sale of the property mortgaged, and copying the language we have already recited from
532 the mortgage, as descriptive of what was mortgaged, the decree adds: "with forty box cars," (numbering them,) "and such portion or share of the rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to a prior mortgage." That is to say, having decided that what is covered by the other two mortgages is not covered by this, it is not subject to sale in this suit.

The marshal, however, who was directed to make the sale instead of a master commissioner, did sell all the rolling stock, and that sale was confirmed by the order of the district court of May 5th, 1863.

It is too clear for argument that a sale by the marshal, unauthorized by the decree, is without any validity. Does the order of the court confirming the sale make it valid?

Upon principle the question is by no means free from difficulty. We are clear that a sale without a decree to sustain it would be a nullity, and we doubt if a court can make it valid by a mere general order of confirmation. If, however, an issue had been made by exceptions or other proper pleading as to the question whether any particular piece of property had been included in the decree or order of sale, and the court had decided that it was so included, it might be an adjudication upon the construction of the decree, which would bind the parties. Nothing of the kind occurred here. There is every

reason, on the contrary, to believe that the court had no suspicion that the marshal had sold more than the decree authorized.

On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for possession of the property which they had purchased. The court thereupon made an order "that the receiver deliver over to said Milwaukee and St. Paul Railway Company the said road and appurtenances between Port-
533 age City and La Crosse, and the rolling stock and property specially described in the decree."

The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver. The fact that this was ordered to be delivered to the purchasers, and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed a sale of all the rolling stock on the road, to purchasers at the sale.

It is true that, over a month later, he ordered the eastern division of the road and the remainder of the rolling stock into the possession of the said company. But this was done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned.

This he declared in an opinion delivered at the time, and is substantially indicated in the orders themselves.

In the light of these facts, we cannot give to the order of confirmation in this case the effect of making valid the marshal's sale, however the rule might be on that subject in other cases. But we do not mean to intimate that in any case a sale by a marshal, or master in chancery, can be valid, when there is no decree to support it. The cases of Shriver *vs.* Lynn, 2 Howard, 43, and Brignardello *vs.* Gray, 1 Wallace, 627, would seem to decide that it cannot.

The order of June 12, 1863, delivering possession of this property to the Milwaukee and St. Paul Railway Company, has been declared to be void for want of jurisdiction, and has been set aside by the court which made it. It therefore affords no support to defendants in this claim to the rolling stock in dispute.

We have thus examined with care and patience the mortgage, and the various orders and decrees of the district court on which the claims of the Milwaukee and St. Paul Railway Company to the ownership of this property depend. There is in all of them some want of clearness and precision, including the mortgage itself.

Before the court ordered the sale, it should have made clear all these ambiguities.

534 It evidently attempted to do so, and we think if it has not in all cases effected that purpose fully, it has furnished the criteria by which it can be done. And although the language of its orders is not always free from doubt, we have been able to satisfy ourselves of the court's intentions.

The title of appellant is clear on the record, unless it has been divested by the proceedings. We do not think that they confer title

to the rolling stock on the Milwaukee and St. Paul Railway Company, nor divest the appellant, except as to the forty box cars, and the proportion of the stock purchased by the receiver which the net earnings of the western division bore to the net earnings of the eastern division, and that they also decide that the mortgage under which they claim did not include any more.

The order of the circuit court sustaining the demurrer to complainants' bill, and the decree of the court dismissing it, are therefore reversed, and the case remanded to that court for further proceedings not inconsistent with this opinion.

Exhibit No 19, filed May 9, 1865. H. L. PALMER.

535 *Exhibit No.* 20.—*Mandate of U. S. Supreme Court on supplemental bill.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Wisconsin, greeting:

Whereas, lately, in the circuit court of the United States for the district of Wisconsin, before you, or some of you, in a cause between the Milwaukee and Minnesota Railroad Company, complainant, and James T. Soutter and Shepherd Knapp, survivors of Greene C. Bronson, deceased, and William Wallace Pratt, William White, and the Milwaukee and St. Paul Railway Company, defendants, the decree of the said circuit court was in the following words, viz: "On the 20th day of September, 1864, the demurrer of the defendant, the Milwaukee and St. Paul Railway Company, to the bill of complaint in this cause, came on to be heard and was argued by counsel, and, the argument not being concluded, the same was adjourned until to-morrow morning.

"And afterwards, on the 21st day of September, 1864, came the parties, by their counsel, and the argument of the demurrer in this cause was resumed, and, the same being concluded, the court took the same under advisement.

"And afterwards, on the 29th day of September, 1864, came the parties, by their counsel, and the Milwaukee and Minnesota Railroad Company ask leave to attach to the supplemental bill of complaint in this cause the order of said district court in the western division case, made on the 7th day of May, A. D. 1853, marked Schedule 'A,' and that it be taken and considered as a part of said supplemental bill. It is ordered by the court that said amendment to said supplemental bill be, and is hereby, made previous to the determination of the demurrer thereto.

"Whereupon the demurrer to said supplemental bill, thus amended, came on to be heard and was argued by counsel, and, on consideration thereof, it is ordered by the court that said demurrer be, and the same is hereby, sustained; and it is further ordered, adjudged, and decreed by the said court that said supplemental bill be, and the same

is hereby, dismissed at the cost of the complainant;" as by
536 the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-four, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged and decreed by this court that the order sustaining the demurrer to the complainant's bill, and the decree of the said circuit court in this cause dismissing the bill, be, and the same are hereby, reversed, with costs, and that the said complainants, the Milwaukee and Minnesota Railroad Company, recover against the said defendants two hundred and fifty-two dollars and twenty-four cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein in conformity to the opinion of this court, 10 March.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

Costs of complainants:

Clerk	$232 24
Attorney	20 00
	252 24

Taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

Exhibit No. 20, filed May 9, 1865. H. L. PALMER.

537 Circuit court of the United States for the district of Wisconsin, in chancery.

The separate answer of the Milwaukee and St. Paul Railway Company, one of the defendants, to the bill of complaint of the Milwaukee and Minnesota Railroad Company against the Milwaukee and St. Paul Railway Company, James T. Soutter, and Shepard Knapp, survivors of Greene C. Bronson, deceased, Wallace Pratt, and William H. White, defendants.

This defendant, now and at all times saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as it is advised it is material or necessary for it to make answer unto, answering, denies

that the La Crosse and Milwaukee Railroad Company was a corporation, existing under the laws of the State of Wisconsin, from the first day of January, 1850, until the twenty-first day of May, A. D. 1860, but admits and says it was such corporation from and after some time in the year 1852, and, as this defendant is informed and believes, still is such corporation: that this defendant has been informed and believes that on the 21st day of June, 1858, said La Crosse and Milwaukee Company was indebted in a large amount of floating debt, accumulated for the purposes mentioned in said bill and other purposes, and that on or about the day and year last aforesaid did make, sign, seal, execute and perfect, ready to be negotiated, sold, delivered and transferred, the bonds as mentioned in said bill of complaint, and that to secure the payment of said bonds, said company executed the mortgages named in said bill of complaint, as Exhibits No. 1 and 2 of said bill; that, as this defendant is informed and believes, said La Crosse and Milwaukee Railroad Company afterwards issued a portion of said bonds; that of the bonds so issued the sum of about one hundred and sixty thousand dollars in nominal value was paid out by said company to the creditors thereof, and was received in payment by said creditors for the debts owing them by said company; that thirty thousand dollars in nominal value of said bonds were delivered by said La Crosse and Milwaukee Railroad Company to the Watertown and Baraboo Valley Railroad Company for the re-purchase of the line for the land grant road from Madison to Portage City, and that ten thousand dollars, nominal value thereof, were expended in building a railroad from Fox lake to the depot on the La Crosse and Milwaukee Railroad, near said Fox lake; that said La Crosse and Milwaukee Railroad Company, by resolution of its board of directors, placed five hundred and fifty thousand dollars, in nominal value of said bonds, in the hands of Stoddard Judd, in trust, for the benefit of the farm mortgage stockholders in said company, to be delivered on certain conditions to be complied with by said farm mortgage stockholders on or before the 1st day of May, 1860; that said conditions were never assented to or complied with, nor were said bonds ever delivered to them by said Judd; that four hundred thousand dollars, in nominal value of said bonds, were by the officers of said company delivered to said Selah Chamberlain, as collateral security for the payment of a note of said company to said Chamberlain for twenty thousand dollars; that the directors and officers of said La Crosse and Milwaukee Railroad Company purposely failed to pay said note, with the view of having said bonds sold and becoming themselves the purchasers thereof; that after the maturity of said note, said Chamberlain placed the same in the hands of Meigs & Greenleaf, brokers of New York, together with said bonds for collection; that said Meigs & Greenleaf thereupon notified said company, and its officers and directors, that said bonds would be sold to pay said note if not paid by them; that afterwards, and in the month of January, 1859, said Meigs & Greenleaf pretended to sell said bonds at private sale to said directors or to their friends, for the benefit and by the procurement of said directors, at the sum of five cents on the dollar, and

that in fact said bonds were divided up and parcelled out by said directors among themselves at said rate of five cents on the dollar, and that they were never in any other manner disposed of or issued by said company; that three hundred and ten thousand dollars, in nominal value of said bonds, were in December, 1858, placed in the hands of Henry G. Gilbert, William Gould, William Watson and Seth R. Foster, for the loan of about fifteen thousand dollars, and as security therefor, and that said bonds were afterwards divided up among the parties last named, without any sale or further agreement with said railroad company; that one hundred and three thousand dollars, in nominal value of said bonds, were placed in the hands of Russell Sage by said La Crosse and Milwaukee Railroad Company, to be used by him in payment of the debts of said company, but that they were not so used, but were subsequently returned by said Sage to said La Crosse and Milwaukee Railroad Company, and cancelled; and that the further sum of about four hundred and thirty-seven thousand dollars of said bonds, as this defendant is informed and believes, were disposed of by said directors and officers of said La Crosse road, among themselves and their friends, after the first of January, in the year 1859, and many of them after the commencement of said foreclosure, at merely nominal amounts, not exceeding five cents on the dollar, and in fraud of the rights of the creditors and stockholders of said La Crosse and Milwaukee Railroad Company.

And so this defendant says that but about two hundred thousand dollars of said bonds were ever sold or used by said company in the payment of its debts, the purchase of the line of the land grant road from Madison to Portage City, and in building the Fox Lake branch road. That the further sum of eleven hundred and forty-seven
538 thousand dollars was never issued and put in circulation or sold by said company, except that certain officers of said company pretended to pledge them, as above stated, at the rate of about five cents on the dollar, which hypothecation this defendant believes to have been fraudulent, and with a view of appropriating the same to the officers and directors of said company, which was afterwards accomplished as above set forth, and that the remaining six hundred and fifty-three thousand dollars of said bonds were never issued by said company, or put in circulation in any manner whatever; but that five hundred and fifty thousand dollars were placed in the hands of Stoddard Judd, and one hundred and three thousand dollars in the hands of Russell Sage, to be used by them as aforesaid on certain contingencies which never happened.

And this defendant, further answering, on information and belief, says that said bonds never passed into circulation in the bond or stock markets of the United States, in the city of New York or elsewhere, and that they are not now held by bona fide purchasers or owners; that said bonds, except those issued to the actual creditors of said company in payment of their said debts, were never in credit in any bond or stock market, but have always been owned and controlled by parties who took them with full knowledge of the fraudulent manner in which they were originally disposed of by the officers of the said

company, and that they have never been in the hands of bona fide purchasers or owners thereof; that one Albert C. Gunnison was one of the directors of the La Crosse and Milwaukee Railroad Company at the time of making said Barnes' mortgage and the disposition of said bonds; and that he, together with Alfred Noxon and Wm. A. Guest, were the executive committee of said company, and were charged with the duty of disposing of said bonds, and disposed of them as aforesaid; and that said Gunnison is now, and for the past four years has been, a director of said Milwaukee and Minnesota Railroad Company, and now or lately the vice-president thereof, and that said Gunnison does now and for the past four years has owned or controlled a majority of all the stock of the said pretended Milwaukee and Minnesota Railroad Company; and that the said Gunnison and his associates who participated in or were cognizant of the aforesaid fraudulent acts and doings of the said directors and officers of the said La Crosse and Milwaukee Railroad Company now own, control, and have the management of the said pretended Milwaukee and Minnesota Railroad Company, and are seeking, under that name, to carry out and consummate the aforesaid fraudulent acts and practices of the aforesaid directors and officers of the said La Crosse and Milwaukee Railroad Company.

This defendant admits that no interest was paid on said bonds, and that on or about the 24th day of February, 1859, the said William Barnes caused a notice, signed by him as trustee, to be published in two newspapers published in the city of New York, and one published in the city of Milwaukee, setting forth the making of said mortgage and supplemental mortgage, the record thereof, the description of the property and premises conveyed by said mortgage, and further setting forth that the interest which became due on the first day of January, 1859, upon all the bonds issued by said company, secured by the said mortgages, amounted to the sum of about seventy thousand dollars, and that it was not paid by said company when it became due, and that said company having made default in such payment for the space of more than fifteen days; that the holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, had duly requested in writing, in compliance with said mortgage, that said Barnes should proceed to sell said mortgaged premises, and convey the same; therefore, notice was thereby given, that in pursuance of the authority vested in said Barnes by said mortgage deeds, he, said Barnes, would expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State, on the 26th day of March, A. D. 1859, at 12 o'clock m. of that day, all and singular the said railroad and real, personal and other property, of whatever nature, covered by said trust deeds, together with all said rights, privileges and franchises appertaining thereto, and also all the corporate and other rights, privileges and franchises of said La Crosse and Milwaukee Railroad Company, which might be included in, covered, or conveyed, or intended to be covered or conveyed, by said mortgage deeds, in order to pay the said outstanding bonds, and interest, and the costs and ex-

penses of the said sale; that said sale so advertised to take place on the said 26th of March, 1859, was on that day adjourned to the 23d day of April, 1859, and on said last named day was further adjourned by said William Barnes until the 21st day of May, on which last named day said Barnes, assuming to act under and by virtue of the power contained in said mortgage deeds and in pursuance of the advertisement so made, and at the time and place therein mentioned, offered said mortgaged premises for sale at public auction, and no other person bidding therefor, said Barnes finally bid the sum of $1,593,333 33-100, and thereupon pretended to strike off said mortgaged premises to himself on said bid, as trustee for said bondholders, and for their use and benefit; that no money was paid by said Barnes or by any other person for him on said sale, and that no part of said bid was ever paid by said Barnes or any other person, except that some of said bondholders, but how many this defendant is ignorant, have surrendered their bonds thereon; that at the time of said pretended sale there was but $1,347,000 of said $2,000,000 of bonds outstanding, including the said $1,147,000 so as aforesaid fraudulently pledged and sacrificed and otherwise disposed of at five cents on the dollar, and that the interest on the said $1,347,000 so outstanding up to the day of said sale amounted to the sum of $83,814, making the whole sum, principal and interest, outstanding and secured by said mortgage on the day of said sale, only $1,430,814, including the said bonds so as aforesaid pledged and disposed of as aforesaid, and that said pretended bid of said Barnes so as aforesaid made exceeded the total amount outstanding and secured by said mortgage by at least the sum of $162,519 33, which last sum should have been paid over by said Barnes, or those for whom he was acting, to be applied in payment of the liens on said property subsequent to said mortgage, but that no part thereof has been paid over by said Barnes, or any person for him, or applied on said subsequent lien. But this defendant, on information and belief, in fact says, that at the time of said pretended sale by said William Barnes on said mortgage, there was only the sum of about $235,000 due or owing on or represented by said bonds, and secured by the said mortgage so as aforesaid given to William Barnes, together with the interest thereon from the 1st day of July, 1858, to the time of said sale, to wit, the said $200,000 as so aforesaid paid by said company in satisfaction of its debt, for the purchase of the
539 line of the land grant road from Madison to Portage and the building of the said Fox Lake branch as above set forth, together with the sum of about $35 000 so as aforesaid advanced upon the said $1,147,000 of bonds pledged by said company as aforesaid, and that in equity and good conscience only the said sum of $235,000 and interest could be allowed on said bid so as aforesaid made by said William Barnes, and that all the rest and residue of said bid should have been paid over by said Barnes to be applied, so far as required, on subsequent incumbrances, so far as necessary, and the residue should have been paid to said La Crosse and Milwaukee Railroad Company, and that it was necessary that such payment should have been actually made before title to said mortgaged property would

pass in pursuance of said sale; that afterwards, and on the 21st day of July, 1859, said Barnes made a declaration, with his hand and seal thereto subscribed under oath, setting forth his proceedings in the premises, and claiming thereby that the equity of redemption in said mortgaged premises of said La Crosse and Milwaukee Railroad Company and all persons claiming by, through, or under them subsequent to the 21st day of June, 1858, would be entirely barred and foreclosed at the expiration of one year from said sale, unless redeemed under the statute in such case made and provided. But this defendant shows that said mortgage was duly recorded in the register's office of Milwaukee county, and that no affidavits, such as are required by law to be filed in the register's office in case of foreclosure by advertisement, have ever been filed in the register's office of Milwaukee county, and that there is no record of said pretended foreclosure in the said county of Milwaukee; that the said William Barnes assumed to bid off said premises for the benefit of said bondholders in virtue of the provisions of an act of the legislature, approved February 8th, 1859; that at the time said mortgage was made and bonds issued no such law was in existence, and, as this plaintiff is informed and believes, but a small portion of said bondholders ever authorized said Barnes to bid off said premises for their benefit, and that said act was of no binding force upon the bondholders under said mortgage, and was no authority to said William Barnes to bid off said premises in the names of said bondholders and for their benefit, except so far as they assented to it; that after said pretended sale, and on or about the 22d day of May, 1859, certain of said bondholders, holding in the aggregate $757,800 of said bonds, besides those deposited in the hands of Stoddard Judd as aforesaid, (who pretended to act with them, but without authority, and has never pretended to surrender said bonds or take stock therefor,) together with said William Barnes, made and signed articles of association pursuant to chapter 79 of the revised statutes of Wisconsin, and filed the same with the secretary of state, by which they assumed to take the name of the Milwaukee and Minnesota Railroad Company, and to organize themselves into a corporation by that name, and from thence have claimed to be a corporation, and that as such corporation they had acquired the title of said La Crosse and Milwaukee Railroad Company to all the property and effects mentioned and described in said mortgage deeds so as aforesaid made to said William Barnes, and that by virtue of said mortgage deeds, the aforesaid foreclosure thereof and sale to said Barnes, and the organization of said Milwaukee and Minnesota Railroad Company, said pretended corporation had succeeded to all the rights, privileges, franchises, and property of the said La Crosse and Milwaukee Railway Company, subject to the liens thereon prior in date to said 21st day of June, 1858, and that from and after one year from said sale so made by said Barnes to himself, said La Crosse and Milwaukee Railroad Company, and all persons claiming by, through, or under it, and all liens thereon subsequent to the 21st day of June, 1858, would be forever barred and foreclosed of and from all right and equity of redemption in said mortgaged premises; that said pretended organiza-

tion of the said Milwaukee and Minnesota Railroad Company, although claiming to be the owner of said property as aforesaid, is not now and never has been in the possession and enjoyment thereof, or of any part or portion thereof, and has not now and never has had any management or control of the same.

And this defendant submits to this honorable court that said pretended foreclosure, sale, and organization of said Milwaukee and Minnesota Railroad Company are fraudulent and void, without force or validity.

1st. Because it was pretended and claimed by said Barnes and those for whom he acted, that the full sum of $2,000,000 had been issued under said mortgage, and that that amount was actually outstanding and secured by the same at the time of making said pretended foreclosure and sale, when in truth and in fact but $200,000 in bonds had been actually and in good faith issued under said mortgage, and the further sum of $35,000 which had been borrowed or secured by the pledge of said $710,000 of said bonds, as above set forth, making the whole amount actually and in good faith secured by said bonds and mortgage only the sum of $235,000 and interest thereon.

2d. Because in the said notice of sale and other proceedings of said foreclosure said Barnes represented and stated that the sum of seventy thousand dollars of interest had accrued and fallen due on said bonds secured by said mortgage on the first day of January, 1859, and that on that day said company made default in the payment of that sum, when, in truth and in fact, there was due on said first day of January only the sum of about $8,225, being the interest for six months on the aforesaid sum of $235,000.

3d. Because the said pretended purchase by said Barnes was unauthorized, and was not in fact a *bona fide* purchase; that his said bid was never paid, and that the title of said mortgaged premises did not and could not pass to said pretended purchaser until the amount of said bid was fully paid.

4th. Because said foreclosure and sale was in other respects irregular and fraudulent as to creditors.

5th. Because said bondholders were not authorized to organize a company under the provisions of chapter 79 of the revised statutes of Wisconsin, if said foreclosure had been regular, valid, and effectual, until the expiration of one year after the said sale by said Barnes.

And this defendant, further answering, on information and belief, denies that said Barnes ever conveyed to said Milwaukee and Minnesota Railroad Company the property and things by him purchased as aforesaid, except that he united with certain of the bondholders in making and executing the said articles of association of said company, or that said Milwaukee and Minnesota Railroad Company ever afterward entered into the possession of said property or franchises of said La Crosse and Milwaukee Railroad Company, or of any part or portion thereof. And this defendant charges and insists that said pretended foreclosure was; for the reason aforesaid, fraudulent and
540 void, and of no validity whatever; that said complainant, by virtue of the proceedings aforesaid, did not become a corpora-

tion under the laws of the State of Wisconsin ; that it did not thereby become the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deed to said Barnes, and the owner of and clothed with all the rights, privileges, franchises, and property of said La Crosse Company, as claimed in said bill of complaint, or any part or portion thereof, but that said proceedings were void and of no force or effect whatever.

This defendant denies that said complainant is a creditor of the La Crosse and Milwaukee Railroad Company, or entitled to the rights or privileges of such creditor, or that it has the right to collect and enforce all or any action or actions, or cause or causes of action, existing in favor of said La Crosse and Milwaukee Railroad Company.

And this defendant, further answering, admits and says that the La Crosse and Milwaukee railroad, so called, extends from Milwaukee to La Crosse ; that the eastern ninety-five miles is called the eastern division, and that portion thereof lying west of ninety-five miles is called the western division.

This defendant admits the execution of the mortgages to Francis A. Palmer, as mentioned in the bill of complaint, and that there are now outstanding bonds issued under said mortgage amounting to $875,000, and that said mortgage is a first lien upon the eastern ninety-five miles of said road, and that no proceeding have ever been had to foreclose the same.

The defendant further admits and says that said La Crosse and Milwaukee Railroad Company, on the 31st day of December, 1856, executed and delivered to Greene C. Bronson, James T. Soutter, and Shepard Knapp, as trustees, a certain mortgage or trust deed of that date, which is called and known as the land grant mortgage, a copy of which is annexed to said bill as Exhibit No. 5, and that afterwards, to wit, on the 17th day of August, A. D. 1857, the said La Crosse and Milwaukee Railroad Company made and delivered to said Greene C. Bronson and James T. Soutter the deed of trust attached to said bill of complaint as Exhibit No. 6.

And this defendant, further answering, says that said La Crosse and Milwaukee Railroad Company was one corporation ; that its railroad was one continuous line from Milwaukee to La Crosse ; that all its rolling stock was purchased for the common benefit of the whole road, and out of the common funds of the company ; that no portion of said rolling stock belonged, was assigned or pertained to one division as against the other, but that it was all procured for and used on the entire length of said road from Milwaukee to La Crosse without respect to the different divisions of the road ; and that all of the mortgages given by said company were intended to include, and in fact did include, all the rolling stock of the whole road belonging to said company, and it was intended by said company that said mortgages should, and they in fact did, become liens upon the whole of said rolling stock, as well that acquired before the giving of said mortgage as that subsequently acquired, in the order of time in which said mortgages were given. And this defendant denies that in giving said mortgage to Bronson, Soutter and Knapp, and Bronson and

Soutter, it was not intended to make the Bronson and Soutter mortgage subject and inferior to the Bronson, Soutter and Knapp mortgage as to the rolling stock of said company; and further denies "that neither of said mortgages describes and conveys any portion of the premises described and conveyed in the other," but, on the contrary, this defendant says that it was the intention in both of said mortgages to grant and convey, and that both of said mortgages in fact did grant and convey all the rolling stock of said company, as well that theretofore as that thereafter acquired. And that said mortgage, so as aforesaid given to Bronson, Soutter and Knapp, conveyed to them all the rolling stock of said company of every name and description, including all that previously as well as that subsequently acquired by said company, and that the lien of said mortgage upon the whole of said rolling stock was prior and superior to any other rights or claims thereto, or liens thereon, made or created by said La Crosse and Milwaukee Railroad Company subsequent thereto.

This defendant, further answering, admits that Bronson, Soutter and Knapp filed their bill to foreclosure said mortgage on the 5th day of December, 1859, and that such proceedings were thereupon had; that a final decree of foreclosure and sale was made therein on the 13th day of January, 1862; and this defendant also admits that said Bronson and Soutter, on the 9th day of December, filed their bill to foreclose the mortgage given to them, as stated in said bill of complaint.

And this defendant, further answering, admits, on information and belief, that all the parties made defendants in said foreclosure suits had or were supposed to have some lien upon or interest in said mortgaged premises, and that while all necessary parties were made defendants, there were many proper parties having subsequent liens, who were not so made defendants, and this defendant admits that said two foreclosure suits were independent suits.

This defendant, further answering, says that the mortgage so as aforesaid given to said Bronson, Soutter and Knapp described said rolling stock in these words: "All and singular the locomotive engines, and other rolling stock, and all other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used in connection with said roads or either of them;" and the same description was contained in the said mortgage to Bronson and Soutter, and the bill of complaint in each of said foreclosure suits claimed the whole of the rolling stock, materials, tools, implements, utensils, and other personal property which had been procured for or used in connection with said road by said La Crosse and Milwaukee Railroad Company up to the time of filing said bills of complaint.

This defendant admits that on the 11th day of March, 1861, said district court made an order of reference to the masters named in said bill of complaint, but this defendant denies that said order was made for the purpose of ascertaining what and what amount of rolling stock

was included in and encumbered by the said mortgage to Bronson, Soutter and Knapp, but says that it was made for the purpose of ascertaining what part of the rolling stock could be shown affirmatively to have been purchased by the proceeds of the bonds issued under the said mortgage so as aforesaid given to said Bronson, Soutter and Knapp, and to said Bronson and Soutter. And that said district
541 court deemed said inquiry material, for the reason that said court held that each of the mortgages given by said La Crosse and Milwaukee Railroad Company covered and included the whole rolling stock on the whole of said road, and that said several mortgages as to said rolling stock would have priority according to their respective dates, except that so far as it could be affirmatively shown that any specified portion of said rolling stock had been purchased by the proceeds of either of the mortgages subsequent to the first, and that in such case said subsequent mortgage would, as to such specified portion of said rolling stock, have a lien superior to the lien of the mortgages prior in date; that said district court, on the said 11th day of March, 1861, and immediately before making said order of reference, delivered a written opinion in said foreclosure suit, an extract from which is hereto annexed, marked as Exhibit No. 1, enunciating the principles above stated as the rule that was to govern said masters in their examination and report on said matter, and limiting their inquiry on that subject to the single point as to whether it should be affirmatively shown to them that any of said rolling stock had been purchased by the proceeds of the bonds secured by the mortgages given either to Bronson, Soutter, and Knapp or to Bronson and Soutter; that upon examination said masters ascertained that said La Crosse and Milwaukee Railroad Company had no record showing what was done with the proceeds of the bonds issued under said mortgages, but that the said proceeds went into the common treasury of said company, and that all of said rolling stock was purchased with the funds taken from said common treasury. And for that reason it was impossible to show affirmatively that any particular or specified portion of said rolling stock was purchased by the proceeds of said bonds except the said forty box-cars specially mentioned in said masters' report, which said forty box-cars were purchased on the note of the company, indorsed by Samuel Brown and another, and that at the time of making such indorsement thirty of said land grant bonds were placed in the hands of said indorsers as security for their indorsement; that said company failed to pay said note, and said indorsers subsequently settled the same by transferring to the holder thereof said thirty bonds. Said masters therefore reported, in accordance with the opinion so as aforesaid given, that said forty box-cars were covered by and included in the mortgage executed to Bronson, Soutter and Knapp, because they were purchased with land grant bonds. This defendant admits that an exception was filed by the complainants in that suit, which was overruled by the court; but this defendant insists that said exception to said report was for the purpose of claiming that said land grant mortgage was a first lien upon all of said rolling stock, prior and superior to the said Palmer mortgage

mentioned in said bill of complaint, for the reason that at the time said Palmer mortgage was made there was no law in the State of Wisconsin declaring rolling stock a fixture, and that said Palmer mortgage was never filed so as to make it valid as a mortgage of personal property, and said exception was so considered and treated by the counsel and the court, as will more fully appear by reference to the written opinion of said district court, delivered on overruling the same, an extract from which is hereto annexed as Exhibit No. 2.

This defendant further admits that on the 13th day of January, 1862, said district court, in said land grant foreclosure suit, made a final decree therein, foreclosing said western division mortgage, and decreeing a sale of the mortgaged premises in the said mortgage described, but expressly denies that said decree declares that all the said rolling stock on the whole of said road, except the said forty box-cars and the said proportion of rolling stock purchased by the receiver, belonged to and was covered by the mortgages on the eastern division. This defendant shows to this court that said decree expressly ordered, adjudged, and decreed that all the rolling stock of said La Crosse and Milwaukee Railroad Company that had been procured for or used on said road should be sold under and by virtue thereof, and after so directing the sale of all of said stock, specially mentioned the said forty box-cars and the proportion of rolling stock purchased by the receiver, being a part of that first mentioned and the part which the previous adjudication of the court had determined said land grant mortgage was the first lien upon, and then directed or adjudicated that all of the balance of said rolling stock first named and directed to be sold is subject to mortgages prior to the land grant mortgage. And this defendant says that said court did decree and order the sale of all the rolling stock on said road purchased by the La Crosse Company, and the proportion of the stock purchased by the receiver belonging to the western division, and that said forty box-cars and said proportion of rolling stock purchased by said receiver should be sold free and clear from all incumbrance, and that all the remainder of said rolling stock on said road, when the receiver took possession thereof, should be sold, subject to mortgages given by the La Crosse Company prior in date to the said land grant mortgage, and that such was the understanding and interpretation of said decree by the complainants therein, Bronson, Soutter and Knapp; that with that understanding thereof they caused the same to be executed by the marshal of said district of Wisconsin by a sale of said premises; that said marshal advertised said premises for sale, and in his advertisement set out the mortgaged premises "*in hæc verba*," as contained in the mortgage, and followed the same with this explanation, to wit:

"The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, A. D. 1856, except forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and except such proportion or share of said rolling stock purchased and procured by the receiver,

costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box-cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever."

A copy of which advertisement is hereto attached and made a part of this answer as Exhibit No. 3.

That in virtue of said decree and in pursuance of said advertisement, which was read at full length on the sale, said mortgaged premises were sold as advertised, on the said 25th day of April, 1863; that afterwards, and on the 28th day of April, 1863, the said marshal filed his report of said sale, with a printed copy of said adver-
542 tisement of sale thereto attached, a copy of which report, without the advertisement thereto attached, is attached to said complainants' bill as Exhibit No. 14.

That in and by said report said marshal reported as follows, to wit:

"And I then offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: all and singular the several tracts, pieces, or parcels of land which constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling-stock, and all the other equipments of every kind and description which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been procured for or used in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads, (of said rolling stock, forty box-cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of the road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or incumbrance; but the remainder of the above mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned, given by said La Crosse and Milwaukee Railroad Company,) together with the tolls, rents, and income to be had or levied there-

from, and all corporate or other rights, franchises, and privileges of said company of, in, and to or concerning the same, being all the property, real and personal, described in the said mortgage, (except the lands therein mentioned granted by Congress to the State of Wisconsin,) and all and singular the privileges, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, situate, lying, and being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White for the sum of two million six hundred and seventy-five thousand dollars, ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid made for the premises last above described."

That said report was filed in the office of said clerk on the said 27th day of April, 1863, and on the same day certified copies thereof were taken from said clerk by the Milwaukee and Minnesota Railroad Company, through M. H. Carpenter, its counsel, by Mr. Ryan, as counsel for Francis Vose and others, by Butler, Buttrick & Cottrill, as counsel for J. Albert Helfenstein; that the consideration of the confirmation of said report was then adjourned by said district court, at the request of said parties, to the 2d day of May; that on the 2d day of May said Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, through said M. H. Carpenter, filed eleven written exceptions to said report; that Mr. Ryan, as counsel for Francis Vose and others, on the 1st day of May, 1863, filed sixteen written exceptions thereto; that Butler, Buttrick & Cottrill, as counsel for J. Albert Helfenstein, on the 2d day of May, filed nine written exceptions thereto; and that on the same day Mr. Hubbel, on behalf of Sebre Howard, Lawrence G. Graham, and Donald D. Scott, filed four written exceptions thereto, a copy of which said exceptions, so filed by said Milwaukee and Minnesota Railroad Company, is hereto annexed, and marked Exhibit No. 4.

That afterwards, on the 4th day of May, 1863, the hearing of said exceptions was commenced by said district court, and the same was continued for two days. Messrs. Carpenter, Ryan, and Hubbel were all heard at full length in support of their said several exceptions, and in opposition to the confirmation of said report of said sale as made. And after said hearing on the 5th day of May, 1863, said court made an order in said cause, overruling each and every of said exceptions so taken, and confirming said report of said sale as made, and this defendant insists that said order so made, after a full hearing upon said report and the exceptions thereto, was an express adjudication that the rolling stock in question was included in the said decree of foreclosure and sale, and that the said court so decided that it was so included, and that the said order and decision so made must be held an adjudication upon the construction of said decree of foreclosure and sale, binding upon all the parties excepting to said report of said sale, and that said complainant is thereby estopped from claiming said rolling stock, and this defendant claims the same benefit and advantage therefrom as though it had pleaded the same in bar to said complainant's said action.

This defendant admits that Exhibits Nos. 9 to 15, attached to said

bill, are correct copies of said originals, except No. 14 does not contain a copy of the advertisement of sale, which forms a part of said report. This defendant further admits that said purchasers, William Wallace Pratt and William H. White, did immediately after said sale, on said 5th day of May, 1863, organize this defendant as a corporation under and in pursuance of the laws of the State of Wisconsin, with authority in that behalf to take, hold, and operate the said mortgaged premises purchased by them as aforesaid, and took the corporate name of the said corporation, the name and style of the Milwaukee and St. Paul Railway Company; and thereupon this defendant says that Pratt and White conveyed to this defendant the whole of said mortgaged premises so purchased by them, and that from thence hitherto this defendant has been and now is a corporation, under the corporate name of the Milwaukee and St. Paul Railway Company, and in that character and capacity holds and operates said mortgaged premises so as aforesaid purchased by said Pratt and White. This defendant further shows that by said proceedings in said foreclosure suit to a sale and confirmation as hereinbefore stated, and the conveyance of said mortgaged premises by said Pratt and White to this defendant, this defendant became the absolute owner thereof, and entitled to hold, use, and operate said mortgaged premises as a
543 railroad, with all the powers, rights, privileges, and franchises which were of said La Crosse and Milwaukee Railroad Company pertaining to said mortgaged premises as fully and completely as it would have done had the legislature granted directly to this defendant a charter with all the powers, rights, privileges, and franchises of the La Crosse and Milwaukee Railroad Company over said mortgaged premises.

And this defendant further shows that on the 6th day of May, 1863, this defendant applied to said district court to be let into possession of the property so as aforesaid purchased by this defendant, and for other purposes, by petition filed in said western division foreclosure suit, a copy of which is attached to the bill of complaint in this case as Schedule A; that upon making said application, Mr. Ryan, on behalf of Francis Vose and others, objected generally to its being granted, on the same grounds that he had urged to the confirmation of the sale, but stated that he did not desire to argue the question; at the same time Mr. Carpenter, on behalf of the Minnesota Company, objected to granting said application, except as to the road-bed of the western division and the rolling stock specially named and described in the decree, and desired time to prepare an answer in opposition to the same; that thereupon, on the 7th day of May, 1863, said district court granted said application so far as the same was not opposed by said Carpenter, but with the condition that this defendant should operate said western division jointly with the receiver and in connection with the said eastern division until the further order of said court, and that said receiver in the mean time should receive and hold all the revenues, tolls, and income arising from the operation of the whole road; and the said court further ordered that an inventory of all the rolling stock and other personal property be made by the re-

ceiver and filed on the 8th day of June then next, as appears by Schedule A, attached to said bill; and thereupon the further consideration of said application was then continued to the 9th day of June, at the request of Mr. Carpenter, to enable him to prepare the answer of the Milwaukee and Minnesota Railroad Company to oppose said petition; that this defendant never took possession, nor was it possible for it to take possession, of any part or portion of said road or property under the order so made, but the whole thereof continued in possession of the receiver, and was operated by him the same as before the making of said order; that afterward, on the 10th day of June, said Hans Crocker filed said inventory as receiver, and on the 11th day of said June said complainant filed its two answers to said petition, copies of which are hereto annexed as Exhibits Nos. 5 and 6, by which said answers the issue was directly made as to whether said decree, sale, and confirmation covered and included said rolling stock, and thereupon said petition and answer were heard and fully argued by counsel for the respective parties; and afterwards, and on the 12th day of June, 1863, said district court made an order in said land grant foreclosure suit of Bronson, Soutter, and Knapp, as follows, to wit:

"In consideration of the said petition of the Milwaukee and St. Paul Railway Company and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and track, with its depots, station-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree, and also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree, and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court; and it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under appointment in this case; subject, however, to the order made in this case and in the other cases in which he was appointed or may hereafter be appointed."

That under and by virtue of said order the said receiver delivered to this defendant said western division of said railroad, said forty box cars, and said proportion of rolling stock purchased by said receiver, together with all the rolling stock on said road when said receiver took said road under his appointment as receiver; that this defendant so received possession thereof on the morning of the 13th day of June, 1863, and from thence hitherto has held possession of the same as owner thereof under the purchase so as aforesaid made, the confirmation thereof, and the order of the court last above recited.

And this defendant further says that said order of June 12th, above set forth, has never been declared void for want of jurisdiction by the Supreme Court or any other court, and that it has never been set aside, vacated, or rescinded by the court that made it or by any other

court, and this defendant submits that said order is in full force and unreversed.

And this defendant further says that it was the understanding and belief of said complainants in said land grant foreclosure suit of said Pratt and White when they made their said bid at said marshal sale, and of this defendant at its organization, that said decree of foreclosure in said western division suit covered and included not only the road-bed of the said western division, said forty box cars specially named, and the proportion of rolling stock purchased by the receiver specified in said decree, but also subject to mortgages prior in date to said Bronson, Soutter and Knapp mortgage given by said La Crosse and Milwaukee Railroad Company, all the rolling stock on said road when the receiver took possession of the same on the 11th day of June, 1860.

And this defendant submits and insists that by the proceedings of said court on said petition, the answers of the Milwaukee and Minnesota Railroad Company thereto, and the order and decree of the court thereon, the said Milwaukee and Minnesota Railroad Company are foreclosed, barred, and estopped from setting up or claiming in this action any right, title, claim, or interest of, in, or to said rolling stock so on said railroad on the 11th day of June, 1860, when said receiver took possession of the same, and this defendant claims the same benefit thereof by this answer that he might or could have had had he pleaded the same in bar of the said complainant's said bill of complaint.

And this defendant further says that the amount of the decree in the said western division foreclosure case on the 25th day of April, 1863, was $3,921,291; that the proceeds of said marshal sale
544 were $2,800,000, which deducted from the amount of said decree at the date of said sale, left the sum of $1,129,201 of said decree unpaid, and that said sum, together with the interest thereon since the 25th day of April, 1863, still remains unpaid and secured by said bonds issued under said mortgage so as aforesaid given to said Bronson, Soutter and Knapp; that the defendant is now the owner in its own right of all said bonds, except about $25,000 which are in the hands of unknown owners, or are lost or destroyed; this defendant therefore insists that it is a creditor of said La Crosse and Milwaukee Railroad Company, and entitled to the rights and remedies of such creditor.

This defendant admits that no proceedings were ever had in the said Bronson, Soutter and Knapp mortgage suit to ascertain the proportion which the net earnings of the said western division mortgaged premises bore to the net earnings of the eastern division mortgaged premises during the time mentioned in said decree in that behalf, and that the same have never been ascertained by any judicial proceeding; that this defendant expressly denies that there was no net earnings of said western division, or that the expense of operating the same was more than the whole gross earnings of said western division.

This defendant admits the appointments of Hans Crocker, esq., as receiver, as stated in said bill, the making of the order of reference in the eastern division foreclosure suit, the report of the masters

thereon on the 7th of October, 1861, and that Exhibits 16 to 23 are correct copies of the originals; but this defendant shows that the order of said district court, made on the 7th day of January, 1862, modifying said report by said masters, as appears by said Exhibit 21, modified said report by striking therefrom the statement that all of said rolling stock, except said forty box cars, were included in and covered by said mortgage so as aforesaid given to Bronson and Soutter, not that said mortgage did not cover and include it, but for the reason that the sole object of that reference in that case was to ascertain what part of said rolling stock was purchased by the proceeds of the bonds issued under said mortgage, because, in the opinion of said district court, said mortgage, as to such part of said rolling stock, would have a lien prior and superior to the mortgages prior in date to said Bronson and Soutter mortgage; and inasmuch as it did not appear to said masters that any part of said rolling stock was purchased by the proceeds of the bonds issued under said Bronson and Soutter mortgage, they should not have reported that any portion of said rolling stock was included therein, and for that reason said report was modified by striking out all that pertained to said Bronson and Soutter mortgage.

This defendant admits that an appeal was taken from the decree in said Bronson and Soutter mortgage to the Supreme Court, and that the decree made January 13th, 1862, was reversed, and that no final decree was entered in said cause until the 27th day of September, 1864, and that said Hans Crocker, esq., still remains receiver in said Howard suit as well as in the suit of Bronson and Soutter. This defendant also admits that said Howard suit was commenced upon a judgment, as stated in said bill, but this defendant says that said judgment was recovered upon a judgment theretofore rendered in the State court, which said judgment of the State court was recovered prior to the making of the Barnes mortgage, and that the lien of said State court judgment was prior to the said Barnes mortgage, and the lien thereof prior and superior to the lien of the Barnes mortgage, and that said lien was not extinguished by the foreclosure of the Barnes mortgage, admitting said foreclosure to have been valid, which this defendant denies; and this defendant denies that the prior and subsequent appointments of said Crocker as receiver in the said Bronson, Soutter and Knapp suit, and in the said Bronson and Soutter suit had the effect to render inoperative his said appointment in said Howard suit, either in whole or in part, but that each and all of said appointments stood in full force notwithstanding the others.

This defendant denies that it designs or intends to injure, oppress, or defraud said complainant; but this defendant does claim and insist that as against said complainant it is the absolute owner of all the rolling stock which was upon said railroad at the time of the appointment of said receiver, and of the proportionate share of the rolling stock purchased by the receiver mentioned in the decree in the said Bronson, Soutter and Knapp foreclosure, and all the franchises that belonged to the La Crosse and Milwaukee railroad pertaining to the western division of said road, but denies that it claims to have ac-

quired the rights as against said complainant to use and operate the eastern division of the said railroad, or to take and receive and keep as its own the earnings, income, or revenue of said eastern division.

This defendant denies that it ever fraudulently combined or confederated with said Hans Crocker for any purpose, or that it was fraudulently or corruptly arranged or agreed between them on the 12th day of June, 1863, or at any other time, that this defendant should enter upon or take possession of the eastern division and rolling stock and franchises of said road, and receive the rents, revenues, tolls, and incomes arising therefrom in defiance of law or in fraud of said complainant's rights.

This defendant admits that the said district court on the 12th day of June made the order marked Exhibit 24, attached to said bill, supposing that said cause was pending in said district court instead of said circuit court, and the same order was entered in the circuit court in the case of Sebre Howard.

And that afterwards said defendant on the 13th day of June, 1863, by virtue of the order entered in said Howard case, but not in fraud of complainant's rights nor by the acquiescence and consent of the said Hans Crocker, except as said order provides, entered into possession of the eastern division of said road and the proportion of rolling stock purchased by the receiver belonging to said eastern division, but of no other property or rolling stock whatever, and thereafter continued to operate said eastern division as provided in said order, and so continued to do until the first day of May, 1864, on which day, in pursuance of the order of this court, Exhibit 25 of bill made on the 28th day of April, 1864, in the Bronson and Soutter and in the Howard suits, said road and the rolling stock so received were returned by this defendant to said receiver, who has since controlled and managed the operation thereof.

And this defendant denies that under the said order of the 12th of June, 1863, entered in said Bronson and Soutter eastern division case, it received any rolling stock except the proportion of rolling stock purchased by the receiver and belonging to said eastern division.

This defendant, further answering, says that there has never been any division or separation of the rolling stock on said road, but that the same has been used indiscriminately upon both divisions.

546 But this defendant denies that it is in any manner indebted to said complainant for the use thereof, but, on the contrary, a fair accounting will show said eastern division largely indebted to the western for the use of said rolling stock.

This defendant admits that the Supreme Court of the United States held said order of June 12th, entered in the eastern division case, void, for the reason that it was entered in the district and not in the circuit court. This defendant admits the order entered in the Howard case in the circuit court was vacated by the said circuit court at the time mentioned, and the order entered in the district court was vacated and set aside by the circuit court; and this defendant shows that after the entry of said last-named orders, to wit, on the first day of May, this defendant, in pursuance of said orders, surrendered said

road to said receiver, and that ever since that time this defendant has operated said road under the direction of said receiver, and subject to his orders and under his control, and has faithfully accounted to said receiver for all the revenues, tolls, and incomes arising therefrom. And this defendant denies that it has violated the orders of this court, or acted in contempt of its authority, or in fraud of the rights of the complainant.

This defendant admits that it owns the said road mentioned in said bill of complaint, commonly called the Milwaukee and western railroad; that at the time said bill was filed it was building the additions thereto mentioned in said complaint; that said line is now completed from Milwaukee to Portage City, and, in connection with said western division, now constitutes a direct through line from Milwaukee to La Crosse belonging to this defendant; that this defendant also owns the railroad known as the Milwaukee and Horicon railroad, and that the legislature at its recent session passed an act ratifying and confirming the organization of this defendant, as provided by its articles of association filed May 5th, 1863, in the office of the secretary of state, and declaring said defendant to be a corporation, with all the rights, powers, privileges, and franchises which were of the Milwaukee and Western Railroad Company, the Milwaukee and Horicon Railroad Company, and of all that part of the La Crosse and Milwaukee Railroad Company pertaining to its road lying west of Portage City, which act was approved and became a law on the 10th day of April last.

And this defendant insists that by virtue of its organization as aforesaid, it acquired and possessed the right to separate and disconnect the said railroad from Portage City to La Crosse from the said eastern division from Portage City to Milwaukee, and to use the said western division independent of the said eastern division, and to connect it with said railroad from Milwaukee, by way of Watertown and Columbus, to Portage City, and make the same one line of road; that at the time said mortgage so as aforesaid given to Bronson, Soutter & Knapp, was made, to wit, on the 31st day of December, 1856, said railroad from Milwaukee, by way of Watertown and Columbus, to Portage, was a part of the La Crosse and Milwaukee railroad, and belonged to the La Crosse and Milwaukee Railroad Company, and that by the provisions of the act of the legislature of Wisconsin of 1856 relating to railroads, said La Crosse and Milwaukee Railroad Company was fully authorized to mortgage the whole, or any portion of its line, as it should think proper, and the purchasers, under a foreclosure of such mortgage, were fully authorized to exercise and enjoy thereafter all and the same rights, privileges, grants, franchises, immunities which belonged to and were enjoyed by the company making said mortgage; that at the time said mortgage was so given said La Crosse Company was the owner of said road by way of Watertown and Columbus to Portage, and said western division was as much connected to the road by way of Watertown and Columbus to Portage City as it was with the said eastern division.

This defendant denies that it intends to transfer or has transferred any rolling stock belonging to said complainant from said eastern divi-

sion to said Watertown road, but this defendant admits that it is now using a part of said rolling stock so as aforesaid purchased at said foreclosure by this defendant on the said western division of said road, and on said Watertown division, which said two divisions now constitute one through line of road from Milwaukee to La Crosse, and the remainder of said rolling stock is still on said eastern division and in use thereon. This defendant denies that it so using said rolling stock in fraud of the rights of said complainant, or to its irremediable injury, or that said eastern division has in any manner been injured by such use of said rolling stock; and this defendant says that since the filing of said bill of complaint said eastern division has at all times had all the rolling stock required to transact the business offering over said eastern division.

And this defendant expressly denies that this defendant, its officers or stockholders, are now, or ever have been, in fraudulent combination or collusion with Hans Crocker for any purpose. It denies that this defendant, its officers or stockholders, have ever given out or pretended that the rights of this defendant and said complainant, respectively, as to said rolling stock, were or are left so vague and indefinite by the said proceedings and decree in said western division mortgage foreclosure suit that this defendant, being in possession, could dictate to or force a settlement with said complainant as the defendant should see fit, or that the orders and proceedings in said western division mortgage foreclosure suit were purposely made and rendered vague and indefinite as aforesaid for the purpose of compelling said complainant to settle with the purchasers at the sale of said western division foreclosure suit upon such terms as might be dictated by them. This defendant denies that it has had, or now has, illegal or fraudulent possession of said complainant's railroad rolling stock or franchises. It admits that it did have possession of the said eastern division of said La Crosse railroad, and of the proportion of rolling stock purchased by the receiver belonging to said eastern division, as fixed by the decree of foreclosure in said western and eastern division foreclosure suits, from the 12th day of June, 1863, until the first day of May, 1864, under the order of this honorable court, modifying the order appointing the receiver in said case of Sebre Howard, above named, and insists that said possession was right and lawful, and for the best interest of all parties having a real or substantial interest in said road, and in no respect an injury or oppression to said complainant or its stockholders; and that it did not have the effect to depress the price of said complainant's stock in the market or embarrass said complainant in carrying on its legitimate and proper business, and denies that this defendant and said Crocker have ever been
547 in corrupt and fraudulent collusion in that behalf, or have, or are seeking in any manner fraudulently or corruptly to injure or oppress said complainant. And this defendant denies that it has been in the possession or in the control of said eastern division or its rolling stock since the said first day of May, 1864; that on the 28th day of April, 1864, an order was entered in this court in the said cases of Sebre Howard and in the case of Bronson and Soutter, (of

which Exhibit 25 of the bill is a copy,) vacating the order made in said causes on the 12th day of June, 1863, modifying the order appointing the receiver, whereby this defendant was placed in possession of the eastern division of said road; and said order of April 28th also directed that this defendant return to said receiver said road and appurtenances, and all rolling stock received under said order; that in pursuance of said order this defendant, on the first day of May, 1864, delivered to said receiver said eastern division of said road, and said proportion of rolling stock purchased by the receiver belonging to said eastern division as aforesaid, which was all the property received by this defendant under said order of June 12th, 1863, last above mentioned, and that since said first day of May this defendant has not been in the possession or control of the same, but the same has been in the exclusive possession and control of said receiver; that said receiver has employed this defendant to run said road since that time under his direction and control, as the best and most economical arrangement that could be made for the time being, and the most profitable and advantageous for all parties having substantial interests in said eastern division, but that such arrangement is temporary, and subject to be terminated at any time at the option of said receiver.

And this defendant denies that it has ever attempted to depress the price of said complainant's stock in the market, or to injure or oppress the defendant, or that it is now attempting in any manner to injure or oppress said complainant. This defendant, further answering, denies that it is using any part of said rolling stock unlawfully, or that the same is being lessened in value by the use thereof by this defendant; that said rolling stock is kept by this defendant in first rate repair and condition, and that when said stock is so kept in first rate repair and condition it is not property of a character liable to great depreciation from use. And this defendant expressly denies that it is using said rolling stock in an improper manner, or in such a way or manner as to greatly injure and depreciate its value, or that the yearly depreciation in value of said rolling stock, from use in the manner in which this defendant has used and is now using the same, would not exceed about seven per cent. of the value thereof, and the depreciation thereof, standing unused and without repair, would be about twenty-five per cent. of its value per annum. And this defendant denies that it has used, or is now using, said stock in fraud of the said complainant's rights in the premises.

This defendant admits and states that the value of said rolling stock, aside from said forty box cars and said stock purchased by said receiver, is about the sum of five hundred thousand dollars, and that the value of that purchased by the receiver is about the sum of $200,000.

And the defendant expressly denies that it is insolvent, as alleged in said amendment to said bill of complaint, or that said complainant will be unable to collect a money decree against this defendant for the use of said rolling stock, should such complainant ever be fortunate enough to obtain such decree. And this defendant, further an-

swering, says there is a defect of parties in the said complainant's bill of complaint; that from the allegations and statements of said bill, and the exhibits thereto attached, it appears and is made manifest that Francis A. Palmer, as trustee of the bondholders secured by the mortgage executed to him, and James T. Soutter, as survivor of Green C. Bronson, as trustee for the bondholders secured by the mortgage executed to said Bronson and Soutter, severally, have claims upon and interests in said rolling stock and the franchises of said La Crosse and Milwaukee Railroad Company, prior and superior to the said pretended claims of the said complainant, and that it is necessary that said Francis A. Palmer and said James T. Soutter, survivor as aforesaid, should be made parties and brought before this court before the rights of this defendant can be finally and definitely settled in respect to said rolling stock, franchises, and property.

And this defendant further shows that the city of Milwaukee is a necessary and material party to the said complainant's bill; that said city holds two mortgages on said rolling stock property and franchises—one given by the La Crosse and Milwaukee Railroad Company, and the other by the Milwaukee, Fond du Lac and Green Bay Railroad Company, with which last-named company said La Crosse and Milwaukee Railroad Company afterwards consolidated and assumed the payment of said mortgage; that both of said mortgages were given to said city, and became liens on said rolling stock, property, and franchises prior to the execution of said Barnes mortgages in said bill of complaint mentioned, and are now a valid and subsisting lien thereon to the extent of three hundred and fourteen thousand dollars.

And this defendant further submits and insists that said La Crosse and Milwaukee Railroad Company is a necessary and material party to the said plaintiff's bill of complaint on the facts stated in said bill and this answer.

And this defendant further shows, that on the 26th day of September, A. D. 1857, the said La Crosse and Milwaukee Railroad Company mortgaged the whole of said rolling stock, property, and franchises mentioned in said bill of complaint to J. Albert Helfenstein, as trustee for the security of the holders of bonds to be issued under said mortgage, and that afterwards, in September, in the year 1857, about three hundred and eighty thousand dollars of bonds were issued under said mortgage, which said bonds, with the interest thereon, are now outstanding and secured by said mortgage, which said mortgage is a valid and subsisting lien thereon prior and superior to the claims of said complainant, and that said J. Albert Helfenstein, as such trustee, is a necessary and material party to said bill of complaint.

And this defendant therefore submits and insists that said Francis A. Palmer, city of Milwaukee; James T. Soutter, survivor of Greene C. Bronson; J. Albert Helfenstein, and the La Crosse and Mil-
549 waukee Railroad Company, are each and all of them necessary and material parties to said bill of complainant, either as complainant or defendants, and that a final and complete determination of

the matters contained in said bill cannot be had without said parties are brought before said court. And this defendant claims the same benefit of this answer as though it had demurred to said bill of complaint.

And this defendant, further answering, admits the death of the said Greene C. Bronson, as stated in said bill of complainant; without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All of which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in that behalf most wrongfully sustained.

Milwaukee and St. Paul Railway Company,
Per ALNSON CARY, *Sec'y.*
CARY & PRATT, *Solr's.*

Exhibit No. 21, filed May 9, 1865. H. L. PALMER.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered that on this 24th day of May, A. D. 1865, before me came Alonson Cary, and made oath that he is the secretary of the Milwaukee and St. Paul Railway Company, the defendant named in and which makes the foregoing answer; that he has read said answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

JAMES McFARLIN
Com'r Circuit Court U. S, Dist. of Wis.

550 District court of the United States for the district of Wisconsin.

Exhibit No. 1.—*Extract from the judge's opinion.*

GREENE C. BRONSON AND OTHERS
vs.
THE LA CROSSE AND MILWAUKEE R. R. COMPANY AND OTHERS.

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their road and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgage, the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity those pledges should be

sustained, and the persons who purchased the company's bonds and furnished the means of the procurement of the stock should be protected; and they also furnished the means for building the road, from which revenues have been derived, to enable the company to procure rolling stock.

From the best consideration I can give the subject, I think the rolling stock on the whole road is to be considered a fixture, and is pledged to the first mortgage of nine hundred and fifty thousand dollars, unless it can be shown affirmatively how much or what portion was procured by funds received out of the issue of land bonds, and the second mortgage bonds, or either of them. So much of the stock as can be shown to have been procured out of either of those issues, or out of the revenues of so much of the road as was built with funds arising out of those issues of bonds, respectively, will pass with the sales on said mortgages. The first mortgage is a lien on the road and fixtures from Milwaukee to Portage City. It was the first pledge of the road and fixtures to creditors; and I apprehend it is the conveyance of the franchise of the corporation granted by its charter, as it is not probable that the corporation could divide its franchise by making mortgages of several parcels of the road property. That would be creating several corporations by deed of a company, to which the legislature granted but one.

Exhibit No. 2.—Extract from opinion of the judge on hearing exceptions and directing entry of final decree.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON *et al.*
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY AND OTHERS.

In obedience to the order of reference, the masters inquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds in this mortgage. They also report that the rolling stock on the road cost $623,235 78, and that all but those box cars are covered by the first and second mortgages. The complainants except to this part of the report, and claim the whole rolling stock. They found their claim upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock. And that their mortgage was the first in date, after the act of October 10, 1856, declaring rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

The legislation of this State was evidently with a view of enabling railroad companies, and especially the La Crosse and Milwaukee

Railroad Company, to raise money in advance, by bonds and mortgage, for the purpose of building their roads and procuring their rolling stock. The directors of this company were given almost unlimited license to make bond and mortgage payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgage the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement. In equity, those pledges should be sustained, and the persons who purchased the company's bond and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived to enable the company to procure rolling stock. This matter is fully settled as authority to this court in the case of Pennock *vs.* Coe, 23 Howard, 117. The rolling stock was procured by the company, as owners, and adapted to the road as the means of operating; and so long as it is thus used, it should be considered as fixtures, even without stated law. The first mortgage covered all the after acquired rolling stock, except such as should be proven to have been purchased with
551 funds raised upon subsequent mortgage; to that extent those mortgages should have a superior equity. For these reasons the exception will be overruled. But the decree will, in addition to the forty box cars reported by the masters, allow to this mortgage its share of the rolling stock, purchased and procured by the receiver, costing $147,942, in proportion to the net revenue.

Exhibit No. 3.—*United States marshal sale.*

District of the United States, district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, and Sheperd Knapp, trustees,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY. [Here follows the names of the defendants.

In pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, in the above-entitled cause, I shall sell at public auction, at the post office, in the city and county of Milwaukee, in said district, on the twenty-fifth (25th) day of April, A. D. 1863, at 2 o'clock in the afternoon, the following described mortgaged property, to wit: All and singular the several tracts, pieces, or parcels of land which now or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, and other out buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the roads of said La Crosse and Milwaukee Railroad Company, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and

also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description relating to said road; also all and singular the lands granted or intended to be granted to said roadway company, under and by virtue of an act of the Congress of the United States, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3d, 1856," and under or by virtue of an act of the legislature of the State of Wisconsin, approved October 11th, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company," and to execute the trust created by an act of Congress, entitled "An act granting public land to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate above mentioned and described.

The rolling stock hereinbefore mentioned is to be sold subject to the lien of mortgages executed prior to the 31st day of December, 1856, except forty box cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 369, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 406, 408, and except such proportion or share of said rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two thousand dollars and sixty-three cents, as the net revenue of the portion of railroad of the La Crosse and Milwaukee Railroad Company hereinbefore mentioned and described bears to the balance or other end of said road since the appointment of the receiver, which said forty box cars and said proportion of rolling stock purchased by the receiver are to be sold free and clear of any incumbrance whatever.

The lands hereinbefore mentioned as granted by the United States will be first sold, and if a sufficient sum shall not be realized therefrom to pay the amount adjudged to be due to the complainants for interest, together with costs, then the balance of the mortgaged property hereinbefore mentioned and described will be sold; and upon this sale the bonds secured by the mortgage described in the bill of

complaint in this cause will be received in part payment of the proceeds of such sale, in the proportion which each bond, at the principal thereof for the amount thereof according to this decree,
552 (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of sale.

DARIUS C. JACKSON, *U. S. Marshal.*
CARY & PRATT, *Solicitor for Complainants.*

MILWAUKEE, *January 17th*, 1863.

Exhibit No. 4.

In the district court of the United States for the district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND Shepherd Knapp,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Exceptions taken by the defendants, the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, to the report of D. C. Jackson, esq., marshal of the United States for said district, of the sale of the mortgaged premises in this cause, reported by him to have been made on the 25th day of April, 1863, by his report filed in this court on the 27th day of April, 1863.

1*st exception.* For that the said report of the said marshal should not have been made to this court, but should have been made to the circuit court of the United States for this district, by order of which last mentioned court made therein in this cause on the 10th day of January, 1863, the said marshal was authorized and directed to make the sale reported by him in his said report; this court then having no jurisdiction to order a resale of the mortgaged premises mentioned in the decree.

2*d exception.* For that it appears by the said report that the said marshal did not give due and sufficient public notice of such sale, is this: that the said marshal, having previously made sale of the mortgaged premises under and in pursuance of the decree of this court in this cause, had no authority to resell the same, except by the order of the circuit court aforesaid. Yet the said marshal gave notice of such sale in this court only, at a time when the jurisdiction to execute the said decree was vested exclusively in the said circuit court, and gives no notice of such sale under the said order of the said circuit court.

3*d exception.* For that the said marshal, in his said report, reports no legal or satisfactory evidence of having given such public notice by advertisement in any newspaper in the city of New York, as required by the said decree.

4*th exception.* For that in and by the said report of the said marshal, it does not appear that the purchasers have paid to him the full amount of their bid reported by him.

5*th exception, as to the sale of the lands ordered to be sold by the decree in this cause.* For that the said marshal, in and by his said report, that he did not offer for sale or sell any known or specified tract or tracts of land, or land by any description by which the land sold was capable of being identified, or land by any description by which a title would pass in a deed of conveyance, but did offer for sale and sell an uncertain, vague, and undefined claim of title to all the lands granted or intended to be granted to the La Crosse and Milwaukee Railroad Company under the acts of Congress and of the State legislature, mentioned in the pleadings, without making it appear whether the said railroad company had acquired any and what title to any and what quantity of such lands, and what lands.

6*th exception, as to the sale of the lands ordered to be sold by the decree in this cause.* For that the said marshal, having so offered for for sale and sold such lands by a description calculated to deter bidders thereon, so sold the same for a grossly inadequate price.

7*th exception, as to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.* For that the said marshal offered for sale and sold the said railroad and its appurtenances under a description vague and uncertain as to the quantity and amount of the appurtenances and rolling stock appertaining to the railroad so sold, and of the incumbrances thereon, and as to the extent and nature of the franchises appurtenant to the railroad so sold.

8*th exception, as to the sale of the railroad and its appurtenances, ordered to be sold by the said decree.* For that the said marshal so offered for sale and sold the said railroad and its appurtenances, under a decree of this court, which does not determine or settle the franchises or right of possession to be acquired by the purchasers of the premises so to be sold, and which is too uncertain to be executed according to the established principles of equitable jurisprudence.

9*th exception.* For that the said marshal reports that he
553 offered for sale and sold the said railroad and its appurtenances and franchises, and the said lands granted by the said act of Congress and of the State legislature, separately; whereas the lands so sold, and the right of the said railroad company thereto, or to a great part thereof, are incident to the franchises so separately sold, and cannot pass to a purchaser unless with the franchises, and as an incident thereto.

10*th exception.* The said defendant further objects to any confirmation of said sale, because by rule 6 of the rules of practice for the courts of equity of the United States, prescribed by the Supreme Court of the United States, it is provided as follows; "All motions for rules, or orders, or other proceedings which are not grantable of course or without notice, shall, unless a different time be assigned by the judge of the court, be made on a rule day and entered in the order book, and shall be heard at the rule-day next after that on which the motion is made;" and because no motion for order confirming said sale has been made on a rule-day or on any other day assigned by the judge of said court for that purpose, and because the time prescribed by said rule for the defendant to make objections and ex-

ceptions to said report has not elapsed, and will not elapse till the next rule-day after the rule-day on which the motion may be made according to said rule.

11*th exception.* That the said lands sold for only a nominal sum, in consequence of the opinion of the judge of this court hereafter printed by himself as follows:

(Opinion omitted.)

MATT. H. CARPENTER,
Solicitor for said Defendants.

Exhibits Nos. 5 *&* 6.

District court of the United States, district of Wisconsin, in equity.

GREENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause, to the petition of the Milwaukee and St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863.

These defendants, saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiencies of said petition, and protesting that this court has no jurisdiction to hear said petition, for answer thereunto, or unto so much and such part thereof as is or are material to be by them then answered unto, answering say, that they have no knowledge, information, remembrance, or belief, as to whether the said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave such petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is receiver of the eastern division, so called, of the Milwaukee and La Crosse railroad, so called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of said Brown and Soutter, as complainants, against the La Crosse and Milwaukee Railroad Company and others, defendants, which action was a suit in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last named company and others.

These defendants deny that the said mortgage mentioned in the bill of complaint in this cause mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company to use, operate, manage, and control said La Crosse and Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or incumbrances on said eastern division, and state that said mortgage did not in terms, nor was it intended to cre-

ate any lien or incumbrance whatever upon said eastern division of said railroad, or of the franchise of said La Crosse and Milwaukee Railroad Company, to use, manage, operate and control said eastern division, but that, on the contrary thereof, the premises, as to franchises conveyed in said mortgage, are conveyed only by the following words and description, that is to say: "And all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description relating to said road," meaning the following roads, that is to say, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse.

And these defendants deny that said petitioner has in any way become entitled to use, manage, or operate said eastern division of said railroad from Milwaukee to Portage, or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convey or mortgage, any of the rolling stock of said La Crosse and Milwaukee Railroad Com-
554 pany pertaining to said eastern division, and these defendants submit that rolling stock is not a franchise; and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the said mortgage, unless it be the 40 box cars mentioned in the order of the court upon the master's report.

MATT. H. CARPENTER, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf; that he has heard read the foregoing answer, and knows its contents, and that the same is true, of his own knowledge.

A. FLEMING.

Subscribed and sworn to before me this 7th day of May, A. D. 1863.

J. M. MILLER, *Clerk.*

Re-sworn to before me this 11th day of June, A. D. 1863.

EDWARD KENTZ, *U. S. Com., Dis't Wisconsin.*

And on the same day came the Milwaukee and Minnesota Railroad Company and Lawrence G. Graham and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Here in court comes the said Milwaukee and Minnesota Railroad

Company Lawrence G. Graham, and Donald D. Scott, and protesting that the rights of the parties as to rolling stock is already *res adjudicata* between the parties to this suit, and that this court has no jurisdiction over or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth, pray that, in case said court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock, claimed in said petition, is not already *res adjudicata* as aforesaid, that it may be referred to a master or masters to take proofs as to the matter and things set forth, and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,
Solicitor for said defendants above named, except said La Crosse and Milwaukee Railroad Company.

555 *Exhibit No. 22.—Statement showing cost of repairs of rolling stock, eastern and western divisions, June 30, 1864, to Sept. 1, 1864, Mil. and St. Paul railway and eastern division, Sept. 1, 1864, to March 1, 1865.*

Repairs—Main line, June 30, 1864, to Sept. 1, 1864:		
Locomotives	$17,583 08	
Cars	19,512 55	
Total repairs		$37,095 63
Repairs—Mil. and St. Paul railway and eastern division, Sept. 1, 1864, to March 1, 1865:		
Locomotives	$82,360 27	
Cars	116,214 96	
Total repairs		198,575 23
Total cost repairs, June 30, '64, to March 1, '65		235,670 86
Deduct amount charged eastern division as their proportion of above for same period:		
Locomotives	$10,569 36	
Cars	16,280 87	
Total repairs eastern division		26,850 23
		208,820 63

Exhibit No. 22, filed May 10, 1865. H. L. PALMER.

556 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE & MIL. R. R. Co. *et al.*

It is stipulated that Hans Crocker, receiver, may have until June 20, A. D. 1865, to file exceptions to the report of the auditor, to be of the same validity and force as if filed in due season under the order of the court.

JAMES S. BROWN, *Att'y for Receiver.*
CARY & PRATT, *Solicitor for Mil. and St. P. Rw. Co., and Counsel for Complainant.*

(Signed without explanation,)
MATT. H. CARPENTER, *Solicitor for same Def'ts.*

Exhibit No. 23, filed May 10, 1865.
H. L. PALMER, *Receiver.*

557 *Extract from the opinion of the district court in eastern division foreclosure cause, as to rolling stock, overruling exceptions to master's report in western division mortgage foreclosure suit.*

* * * * * * * *

In obedience to the order of reference, the masters inquired into the quantity of rolling stock covered by this mortgage. They report that forty box cars, costing thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, giving their respective numbers, were purchased with funds raised on the bonds in this mortgage. They also report that the rolling stock on the road cost $623,235 78, and that all but those box cars are covered by the first and second mortgages.

The complainants except to this part of the report, and claim the whole rolling stock. They found their claim upon the grounds that the rolling stock is personal property, and that the first mortgage was not filed as a chattel mortgage, and is therefore void as to the rolling stock; and that their mortgage was the first in date, after the act of October 10, 1856, declaring rolling stock to be real property. I do not think the statute for filing chattel mortgages is applicable to this species of property in actual use upon a railroad.

The legislation of this State was evidently with the view of enabling railroad companies, and especially the La Crosse and Milwaukee Railroad Company, to raise money in advance, by bonds and mortgages, for the purpose of building their roads and procuring rolling stock. The directors of this company were given almost unlimited license to make bonds and mortgages, payable in any manner they might deem proper, and to pledge or mortgage their property as security. By the terms of the mortgages the rolling stock to be procured was pledged to secure the debt contracted for raising the means of its procurement.

In equity those pledges should be sustained, and the persons who purchased the company's bonds and furnished the means for the procurement of the stock should be protected. And they also furnished the means for building the road, from which revenues have been derived to enable the company to procure rolling stock. This matter is fully settled as authority to this court, in the case of Pennock *vs.* Coe, 23 Howard, 117. The rolling stock was procured by the company as owners, and was fitted and adapted to the road as
558 the means of operating it; and so long as it is thus used it should be considered as fixtures, even without the statute law.

The first mortgage covered all the after-acquired rolling stock, except such as should be proven to have been purchased with funds raised upon subsequent mortgages; to that extent those mortgages should have a superior equity.

For these reasons the exception will be overruled. But the decree will, in addition to the forty cars reported by the masters, allow to this mortgage its share of all the rolling stock purchased and procured by the receiver, costing $147,942, in proportion to the net revenues.

559 *Opinion of Hon. A. G. Miller, judge of the district court of the United States for the district of Wisconsin, published by him in September*, 1863.

The motion and petition of the Milwaukee and Minnesota Railroad Co. for an order putting them in possession of the eastern division of the La Crosse and Milwaukee railroad between Milwaukee and Portage, being addressed to the circuit and district courts, as a judge of the circuit court, and as the judge of the district court, I give my opinion :

At the January term of 1862 of the district court, then having circuit court jurisdiction, a decree of sale of the mortgaged premises was made on the bill in this case, and also on the bill in the case of Bronson, Soutter and Knapp, a decree was made for the sale of the western division. Both decrees are complete in themselves in ascertaining the amount due, in ordering the sale by the marshal, and in foreclosing the equities of the other defendants, including the Milwaukee and Minnesota Railroad Company. These decrees were final decrees, settling the rights under the bill Whiting *vs.* the Bank, 13 Peters, 15; Michaud *vs.* Girod, 4 Howard, 503; Fargay *vs.* Conrad, 6 Howard, 201. In this case an appeal to the Supreme Court of the United States was taken on the part of the complainants. In the other case the decree has been carried out by sale of the mortgaged premises. The appeal removed the case to the Supreme Court, where it is pending. The appeal postponed the execution of the decree; 5 Cranch, 281. The decree being in favor of the complainants, a bond for a supersedeas, or stay of execution, could not be required; all that could be required was a bond to answer for costs and damages.

By the practice of the federal courts, the court appealed from must retain possession or control of the property which is the subject of

the controversy during the pendency of the appeal when there is a supersedeas, or when execution of the decree is postponed, as in this case. It is the same as in an action at law commenced by seizing property under an attachment; the property remains in the custody of the court, for the lien of the attachment is retained, or where a vessel is seized the libellant appealing does not release it. Upon any other principle the removal of a case to the Supreme Court of the United States on the part of a complainant, plaintiff, or libellant, might be a fruitless effort. In this case the property came into the custody of the court by its receiver, and during the pendency of the appeal the receiver cannot be discharged. The court appealed from may, in case of necessity pending the appeal, make sale of the property, retaining the proceeds of the sale, or may order the use of the property upon security, or may control its use for the best interests of the parties. (16 Howard, 135; 6 Wheaton, 519, 194; 5 Cranch, 281.) But the court cannot deliver the property to an adverse claimant.

The stipulations on which the petition of the Minnesota Company is founded provide for possession of the company previous to the proposed modification of the decree. It is stipulated that the decree may be modified in the Supreme Court, or circuit court, or district court. While the case is pending in the Supreme Court on the appeal there is no court to modify the decree, nor is there any
560 power in any court to remove that company from possession if it should fail to pay the liens according to the stipulations. This court being obliged to account for the property or affirmance of the decree, would be placed in an awkward predicament if an independent company founded on a lien subsequent to the mortgage in suit were in adverse possession.

If the decree can be modified it must be done in the circuit court after the return of the case from the Supreme Court to the district court, there by order transferring the record to the circuit court. Until there is a court competent to act on this matter, I need not give any opinion on the following points made at the argument:

1. Whether the decree under the stipulations and objections thereto can be modified.

2. Whether two independent companies can be allowed, under the laws of the State and the charter of the La Crosse Company, to operate the road.

3. Whether the Minnesota Company can come here by petition for possession, it being merely a foreclosed defendant to this bill.

4. Whether the decree in the case of Cleveland vacating Chamberlain's lease and judgment estops him from claiming the possession.

5. What company or who is entitled to the franchise or grant of reorganization?

The only legitimate question before the court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated during the pendency of the appeal, as an entire road, under the grant of charter, to the best interests of the parties, the creditors and the public? It was conceded that the use of the road, could not be obstructed at Portage City, but that the cars

must be run through the whole length of the road? Upon the best consideration I could give the subject, the order was made modifying the order appointing the receiver and allowing the Milwaukee and St. Paul Company, the owners of the western division, to operate the eastern division under the supervision of the receiver, and subject to the full and complete control of the court even to a removal, if the company fails faithfully to comply with the order, and with ample security for the revenues of the road.

This order was intended to prevent a diversion of the travel and business on the western division from the eastern, and to save the expense of two sets of employees, and to prevent interruption of the public.

The requirement is, that the St. Paul Company, being the owners of the western division, must use the whole road without diversion of business or obstruction to the prejudice of the eastern division. The eastern division is not operated by the St. Paul Company upon any principle of right, but merely subject to the control of the court for the time being.* If the nominal complainants, Bronson and Soutter, or the bondholders, who are the real parties in interest, had desired the stipulations above mentioned to be carried out, they could have withdrawn the appeal, or have declined to oppose the motion made in the Supreme Court for its dimissal. It is probable that they preferred contesting on the appeal for a decree for the full amount with
561 an order of sale, to accepting a modification of the decree with the conditions of the stipulations.

In the opinion of the Supreme Court overruling the motion to dismiss the appeal in this case it is remarked, "The litigation between Bronson and Soutter and the defendants, on any matter in which there was a joint interest, is closed by the decree; the object of the suit was to ascertain how much money was on the mortgage, and to sell the property unless the amount was paid. The court did find what was due and ordered the sale. The very purpose of the litigation by Bronson and Soutter was accomplished, and nothing remained for them to do, if they felt aggrieved by the finding of the court, but to appeal; their right of appeal attached on the rendition of the decree. It is said that some exceptions to the report of the masters were pending and undetermined when this decree was made, but those exceptions did not relate to any claims of Bronson and Soutter; they were collateral to the main purposes of the suit, and concerned the defendant alone." If this court should find that Bronson and Soutter are entitled to their whole claim, and in the mean time the property is sold and out of their control, how would their success benefit them? It would be a victory barren of results.

The record of this decree and proceedings is in the district court by virtue of the act of Congress of March 3, 1863, authorizing the district court of Wisconsin which made the decree, "to issue writs of execution, or other final process, or to use such other process and proceedings as may be in accordance with law, to enforce the judgments and decrees." According to the decisions the decree is final

according to the object and scope of the bill, and its record must remain in the district court.

The Supreme Court remarks that the decree is not final in the strict technical sense of the word, for something yet remains for the court below to do. This remark referred probably to the exceptions and the cross bill allowed to be filed in pursuance of them by the Minnesota Company, a defendant against Selah Chamberlain, another defendant, in a controversy between them respecting the surplus of the sale ordered by the decree, but not in any way affecting or concerning the case made in the bill; as to the cross bill, or the dispute about the surplus, if any, the district court had something to do when the jurisdiction of the court was changed, transferring the cause to the circuit court where it is pending; this is, according to the opinion of the Supreme Court, a collateral matter.

If there are exceptions undisposed of, they are the probable causes of the cross bill, and exclusively concern the defendants. The decree in this case does not in any manner determine the relative rights of the defendant to surplus of sale. It left that matter open for determination in case a surplus of sale should be returned by the marshal. If there should be no surplus, can it be contended that the decree is not final and conclusive to all intents and purposes? And can it be seriously contended that a controversy about supposed or unascertained surplus deprives the district court of the power to execute the same decree?

The district court, not having jurisdiction now to determine a dispute among creditors for surplus of sale under a decree or
562 on execution, would allow the parties to bring a cross bill, or form an issue in the circuit court, and on certificate of the determination of that court would pay out such surplus. Such is the position of the cross bill; the district court would hold the surplus during the pendency of litigation. That litigation would not necessarily transfer the record from the district to the circuit court; the record in the district court could be carried to the circuit court as evidence merely.

We have decided that the record of the decree and sale in the case of the western division remains in the district court. In this both judges agree. The decrees are similar in all essential particulars; but it is immaterial, for the purposes of this petition, whether the record of this cause is in the circuit or district court.

The court appealed from must preserve the property until the case is certified back from the Supreme Court. The Howard case is pending in the circuit court. That is a creditor's bill on a judgment against the La Crosse Railroad Company subsequent to the mortgage to Bronson and Soutter. The same receiver was appointed in both cases. The Howard case is subordinate to the mortgage; but if, by means of the creditor's bill, Howard is entitled in equity to be first paid out of the revenues of the road, he will have the amount of his judgment. For these reasons the application of the Minnesota Company for possession, and the motion of Howard to rescind the order of June 12, 1863, will be overruled.

563 *Exhibit No. 2.—Opinion by Miller, district judge.*

U. S. circuit court, April term, 1864.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company, Selah Chamberlain and others.

A petition is presented to this court, in behalf of the Milwaukee and Minnesota Railroad Company, praying an order to put said company into possession of the eastern division of the La Crosse and Milwaukee railroad, covered by the mortgage to complainants, upon paying the amount of interest due. The interest is not paid nor tendered by the company.

Selah Chamberlain was in possession of the railroad, under a lease from the La Crosse and Milwaukee Company, when the mortgage was made by said company to Barnes, as trustee, under which the Milwaukee and Minnesota Company claims title; and he was removed from such possession by these complainants under their mortgage, or by proceedings under this bill, or the bill of Sebra Howard, but it is not important at this time under which.

Chamberlain and the Minnesota Company were made defendants in this bill as incumbrancers or owners. Chamberlain answered, setting up his lease, and also his judgment against the La Crosse Company for over six hundred thousand dollars, and claiming to be paid out of the proceeds of sale of the mortgaged premises. The Minnesota Company did not answer the bill, but let it be taken as confessed.

The district court, on the petition of John S. Rockwell and A. Fleming, stockholders of the Minnesota Company, charging said company with fraud of their interests for not appearing and answering the bill in this case, and praying leave to answer in the name of the Minnesota Company, allowed them to file such answers, from a desire to discharge a faithful duty to all parties, and to extend to them the privilege of a full hearing. These answers made the principal defence, in which the amount claimed by the bill was reduced one-half.

The Minnesota Company was organized in pursuance of the sale *in pais* to foreclose the Barnes mortgage. Its title is the same in law as if the La Crosse Company had conveyed to it, subject to prior incumbrances, during the pendency of this bill. It is only entitled to possession as purchaser of the equity of redemption, subject to prior incumbrances. It acquired no right by a decree or judgment of a court. Has it any more right to possession than the La Crosse Company would have? Chamberlain claims the right to contest the title of the Minnesota Company, and that company has a right to contest Chamberlain's lien.

564 These matters should be adjudicated upon pleadings and proofs admitting an appeal. On this petition there is neither an appeal nor a certificate of division of opinion to the Supreme

Court. The Minnesota Company contested the consideration of Chamberlain's lien as set up by his answer, and took testimony for several months before the masters appointed in this case, who reported about four hundred thousand dollars in his favor. To enable the district court to decide this contest between these two defendants according to equity practice, the Minnesota Company were allowed to file a bill against Chamberlain for that purpose; which bill I understand has been discontinued. Unless in a clear case, the court cannot put into possession apurchaser *in pais* of an equity of redemption, subject to prior incumbrances disputing the legality of the purchase.

The bill in the case of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company and others was in aid of an execution levied to remove the incumbrance of Chamberlain's lease and judgment. Whether the decree annulling said lease and mortgage was strictly correct or not, it was responsive to the prayer of the bill, and had relation to the bill. It should not, I think, have a greater effect than the bill prayed for—that is, to remove the incumbrance from the way of the execution levied. But I think the company cannot, on this petition, preclude Chamberlain from setting up his lease and judgment. He has a right to have his claim tried in an adverse suit, between himself and the Minnesota Company, either before the sale of the mortgaged property, or for the surplus after the sale. Thus far, for this purpose, every opportunity has been given by the district court to this company and its stockholders. We cannot judicially decide on this petition for possession that Chamberlain forfeited his lease. The Supreme Court did not pass upon Chamberlain's claim in its opinion in this case.

The first appointment of a receiver was made on a judgment creditor's bill of Sebra Howard against the La Crosse Company. The same receiver was subsequently appointed in the case of these complainants. The mortgage of complainants being prior in date to Howard's judgment, the orders made from time to time were made in this case. The receiver's monthly reports are filed in both cases. Howard's judgment in the district court was founded on the judgment record from the circuit court of Milwaukee county—whereby it appears that the judgment in that court was rendered on the first day of May, 1858, for a sum exceeding twenty-five thousand dollars. The judgment in the State court was prior to the mortgage to Barnes. The judgment in the district court was subsequent. The Supreme Court in passing on the judgments against the La Crosse Company as liens, considered the Howard judgment subsequent in lien to the Barnes mortgage, from an imperfect statement of the judgments in the record before them. They did not pass on the question whether the lien of the Howard judgment should exist from the date of the judgment in the State courts or the district court.

As I understand it, the record before them not containing the evidence of the foundation of the judgment in the district court, that question remains open. Suits on judgment, I think, do not extinguish their liens. They were the common law manner of reviving judgments. The revival, whether by action or *scire facias*, has relation

to the original judgment. Under an execution issued on the
565 judgment in the State court, property was sold to the amount of about eleven thousand dollars; but no sale being allowed under an execution on a judgment at law of a railroad and its appurtenances, the remedy in the Howard judgment was by a judgment creditor's bill. And Howard is entitled to retain that bill and continue the receiver until the property of the judgment debtor is exhausted by legal proceedings, or the judgment is paid. If the Minnesota Company choose, they can by answer contest the lien of the judgment, if they are a party defendant; and if not, the court will permit them to become a party and make the defence. Howard is not now here in a position to meet this question on the petition for possession.

We cannot know judicially that the property described in the mortgage of the complainants, subject to prior mortgages to a large amount, is an adequate security for the accrued and accruing interest on this debt of one million of dollars, without satisfactory evidence, and until the receiver files his full account. The revenues for the last year appear large, but I think it will appear that necessary expenditures and disbursements leave not large balances. Until judicially satisfied from the receiver's accounts of the adequacy of the security, the receiver should not be discharged, unless he has wilfully or negligently mismanaged the estate. A rule will be made upon the receiver to file a continuous monthly account of receipts and disbursements from the time of his appointment.

I am anxious that the necessity for retaining the receiver should not exist for a day. I wish to have him discharged as soon as a due regard to the rights of the public and the parties will allow of it.

The first duty of the court is to secure the interests of the public under the grant of the charter to the La Crosse Company. The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes.

For this purpose the orders of the 12th of June, 1863, in this case and in the Howard case, modifying the original orders appointing the receiver, were made. The Milwaukee and St. Paul Company were allowed by those last orders to operate temporarily the eastern division of the road in connexion with the western division, of which they were owners, for the sake of economy in operating the road, to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul Company from diverting trade and travel from the eastern division. It was known that the St. Paul Company were about to connect their division from Portage City to the Watertown road, and thence to Milwaukee, which might affect the eastern division.

The order allowing that company to operate the eastern division subject to the control of the court and the supervision of the receiver, and under heavy bonds with adequate security, prohibited them from putting a car on their extension from Portage or on any other road east of that point. I considered it a proper duty for the public and the parties to secure the use of a continuous route according to the

charter, without interruption or deviation of trade or travel between the termini of the road.

There is a disposition not to discriminate between these orders for the temporary and conditional operation of the road by the St. Paul Company, and an order for the absolute and adverse possession of the Minnesota Company.

566 The order of the twelfth of June in the Howard case was made in the circuit court where the bill was pending, and in this case in the district court. The order of the district court in this case was made under the universal belief that, according to the opinion of the Supreme Court, the record remained in the district court for its proceedings as a final decree under the act of March 3d, 1863. The Supreme Court having since announced that the record should have been transferred to the circuit court under the act of July 15, 1862, the order of the district court is to be considered of no validity, and it is my duty to order it rescinded. For the reasons here given, the orders of the 12th of June, 1863, will be rescinded, and the eastern division and appurtenances restored to the receiver under his original appointment.

567 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this 13th day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

Exhibit No. 25, filed May 29th, 1865. H. L. PALMER.

568 Circuit court of the United States for the district of Wisconsin, in equity.

NATHANIEL S. BOUTON
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and the Milwaukee and Minnesota Railroad Company.

Be it remembered that heretofore, to wit, on the 26th day of May, 1862, the above-named complainant filed in the office of the clerk of the district court of the United States for the district of Wisconsin his bill of complaint against the above-named defendants in the words and figures following, to wit:

To the judge of the district court of the United States for the district of Wisconsin, in equity :

Nathaniel S. Bouton, of Chicago, in the State of Illinois, and who is a citizen of the State of Illinois, brings this his bill of complaint against the La Crosse and Milwaukee Railroad Company and Milwaukee and Minnesota Railroad Company, corporations created and organized under the laws of the State of Wisconsin, and thereupon your orator complains and says that heretofore, to wit, on or about the 15th day of June, A. D. 1857, the firm of Stone, Boomer & Bouton, of Chicago, in the said State of Illinois, of which firm your orator was then a member, sold and delivered to the defendant, the La Crosse and Milwaukee Railroad Company, three passenger cars to be used on the railroad of said company, and which have been so used, and, as your orator is informed and believes, are still so used for the sum of seven thousand three hundred and fifty dollars, for which sum, together with the sum of five hundred and fourteen dollars and fifty cents interest, the said La Crosse and Milwaukee Railroad Company gave to the said firm of Stone, Boomer & Bouton its two certain promissory notes for the sum of three thousand nine hundred and thirty-two dollars and twenty-five cents each, and payable in fourteen months from the 15th day of June, 1857. That on or about the fifteenth day of October, A. D. 1857, the said firm of Stone, Boomer & Bouton, for the purpose of exchanging said notes for others, surrendered up the same to said La Crosse and Milwaukee Railroad Company, and the said company gave said firm for and in exchange for said notes its three certain promissory notes, bearing date on the day last aforesaid and payable in nine months from their dates, to the order of said company, and by it indorsed in blank, for the sum of two thousand six hundred and twenty-one dollars and fifty cents each.

And your orator further shows unto your honor that thereafter, and upon the dissolution of said firm, and upon the distribution of the partnership assets, one of said last-mentioned notes was set off to and became the individual property of your orator, and one of the same notes was set off to and became the individual property of A. B. Stone, one of the members of said firm, and that thereafter, and before the commencement of the suit at law hereinafter mentioned, the said A. B. Stone for a valuable consideration transferred and delivered the note so set off to him as aforesaid to your orator.

And your orator further shows unto your honor that during the year A. D. 1857, and between the seventh day of April and the twenty-sixth day of October of that year, Lucius B. Boomer, one of
569 the copartners in said firm, in pursuance of a contract completed on or about the said seventh day of April, A. D. 1857, furnished a large amount of materials and performed a large amount of labor for and in the construction of one of the railroad bridges on the line of said railroad; that your orator furnished a large amount of cast iron and made and furnished a large amount of wrought iron used under said contract in the construction of said bridge; that on or about the twenty-sixth day of October, A. D. 1857, the said La Crosse and Milwaukee Railroad Company, in settlement for the work,

iron and other materials used in the construction of said bridge, made and delivered to said Lucius B. Boomer, among other notes for the balance then due, their three certain promissory notes, dated on the day last aforesaid and payable to its own order, and indorsed by the said La Crosse and Milwaukee Railroad Company, as follows: one for the sum of nineteen hundred and eighty-nine dollars and eighty cents, payable in six months after its date, with interest after due, at rate of ten per cent. per annum, and two for the sum of one thousand each, and each payable in eleven months after their date, with interest after due at the rate of ten per cent. per annum.

And your orator further shows unto your honor, that the three last-mentioned notes were thereupon transferred and delivered to your orator for and on account of the iron so furnished and made and used in the construction of said bridge as aforesaid.

And your orator further shows unto your honor that on or about the ninth day of December, A. D. 1858, the sum of seventeen hundred and fifty-eight dollars and eighty-four cents was paid upon said note of nineteen hundred and eighty-nine dollars and eighty cents.

And your orator further shows unto your honor, that on or about the twenty-sixth day of February, A. D. 1859, he caused a suit to be instituted in this honorable court, on the law side thereof, against the defendant, the La Crosse and Milwaukee Railroad Company, upon the two notes of twenty-six hundred and twenty-one dollars and fifty cents each, dated November fifteenth, A. D. 1857, and belonging to your orator as aforesaid, and upon the three notes above described and taken by your orator for the iron used in the construction of said bridge as aforesaid, and that such proceedings were had in said suit, that on the fifth day of April, A. D. 1859, by the consideration and judgment of the said court, your orator recovered against the said defendant, the La Crosse and Milwaukee Railroad Company, the sum of seven thousand nine hundred and thirty-seven dollars and thirty-seven cents, as well for the damages which he had sustained by reason of the non-performance of certain promises and undertakings as for his costs and charges which were adjudged to your in and by said court, whereof the said defendant, the La Crosse and Milwaukee Railroad Company, was convicted as by the record of the said judgment in the office of the clerk of said court, reference being thereunto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further shows unto your honor that the said judgment so recovered as aforesaid remaining in full force and effect, and the damages and costs aforesaid remaining unpaid and unsatisfied, your orator, on or about the twenty-third day of April, A. D. 1862, for the purpose of obtaining satisfaction of said judgment, sued and prosecuted out of said court a writ called a fieri facias, directed
570 to the marshal of said district of Wisconsin, by which said writ the said marshal was commanded that of the goods and chattels of the said defendant, the La Crosse and Milwaukee Railroad Company, in his district, cause to be made the amount of said judgment, and if sufficient goods and chattels could not be found, then the

said marshal was commanded to cause the amount of said judgment as aforesaid to be made of the lands and tenements of said defendant, the La Crosse and Milwaukee Railroad Company, which it might have had at the time of the docketing of such judgment; and that he should have that money before the judge of said district court, at the city of Milwaukee, in the district of Wisconsin, on the first Monday of May, A. D. 1862, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ.

And your orator further shows unto your honor that the said writ of fieri facias, before the delivery thereof to the said marshal, was duly indorsed with a direction to collect the damages and costs aforesaid, with interest and his fees, and was afterwards, and on or about the twenty-third day of April, A. D. 1862, delivered to the said marshal to be executed in due form of law.

And your orator further shows unto your honor that the said marshal, on or about the fifth day of May, A. D. 1862, returned on the said writ to him in that behalf, directed and delivered as aforesaid, "no property found whereon to levy and satisfy this writ, or any part thereof," as by the said writ of fieri facias, and the direction and the return of the said marshal indorsed thereon as aforesaid, filed in the office of the clerk of said court on the day and year last mentioned, will more fully appear, and to which, or a copy thereof, your orator prays leave to refer.

And your orator further shows unto your honor that, as he has been informed and believes to be true, the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and the said defendant, the La Crosse and Milwaukee Railroad Company, has not paid the same to your orator, but has hitherto wholly neglected and refused to do so.

And your orator further shows unto your honor that there is now actually and equitably due to your orator upon the said judgment the sum of seven thousand nine hundred and thirty-seven dollars and thirty-seven cents, together with interest thereon from the fifth day of April, A. D. 1859, over and above all just claims of the said defendant, the La Crosse and Milwaukee Railroad Company, by any offset or otherwise.

And your orator further shows unto your honor that, as he has been informed and believes to be true, on the twenty-first day of June, A. D. 1858, and for some time previous thereto, the said defendant, the La Crosse and Milwaukee Railroad Company, was insolvent.

And your orator further shows unto your honor that, as he has been informed and believes to be true, within a few months and less than a year previous to the day last aforesaid, it had issued certificates, purporting to represent its capital stock, to an amount exceeding three millions of dollars, which certificates had been disposed of by the directors and officers of said company at merely nominal prices.

And your orator further shows unto your honor that, as he has been informed and believes to be true, the floating and unsecured indebtedness of said defendant, the La Crosse and Milwaukee Rail-
571 road Company, on the day last aforesaid, and exclusive of

judgments theretofore recovered against said company, exceeded in amount the sum of two million and eight hundred thousand dollars, and that the indebtedness of said company secured by mortgage at that time exceeded in amount the sum of seven millions of dollars, and that the stock of said company, including the certificates of stock above mentioned, exceeded in amount the sum of eight millions of dollars.

And your orator further shows unto your honor that, as he has been informed and believes to be true, on the day last aforesaid, and for a long time previous thereto, almost the entire property of the said defendant, the La Crosse and Milwaukee Railroad Company, consisted of its railroad and the appurtenances thereto belonging, and its interest in certain lands granted to it by Congress and the legislature of the State of Wisconsin, and that almost its entire revenue consisted of the earnings of its said railroad, and that the annual net earnings of said railroad were much less than sufficient to pay the interest upon its said mortgage indebtedness.

And your orator further shows unto your honor that, as he has been informed and believes to be true, on or about the twenty-first day of June, A. D. 1858, pursuant to a vote of the board of directors, at a meeting held in Albany, in the State of New York, the said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, and defraud your orator and its other creditors of their lawful actions, debts, and demands, executed under its corporate seal a deed of conveyance in the form of a mortgage or trust deed, dated on that day, of all the property, real and personal, then belonging to said company, as well as that thereafter to be acquired by it, to one William Barnes, and thereupon caused the said conveyance, so executed as aforesaid, to be delivered to the said William Barnes, a copy of which conveyance, marked Exhibit A, is attached to this your orator's bill of complaint and made a part thereof.

And your orator further shows unto your honor that, as he has been informed and believes to be true, on or about the 11th day of August, A. D. 1858, pursuant to a vote of the board of directors, at a meeting held at Albany, in the State of New York, the said La Crosse and Milwaukee Railroad Company, with the like intent as aforesaid, to hinder, delay, and defraud your orator and its other creditors of their lawful actions, debts, and demands, executed under its corporate seal, and delivered to the said William Barnes, a second and further deed of conveyance in the form of a mortgage or trust deed, bearing date on the day last aforesaid, of all the property, real and personal, then belonging to said company, as well as that thereafter to be acquired by it, a copy of which second conveyance, marked Exhibit B, is attached to this your orator's bill of complaint and made a part thereof.

And your orator further shows unto your honor that although the ostensible and pretended object of the La Crosse and Milwaukee Railroad Company in making said conveyances was, among other things, to secure a portion of its floating unsecured debt, yet, as your orator is informed and believes to be true, its real object in making the said conveyances was, by a foreclosure of said conveyances or mortgages,

to cancel and wipe out the entire stock of said company and the entire unsecured debt of said company, with the exception of a very few claims held by the personal friends of the then directors of said company, and certain other persons who were acquainted with
572 the facts and circumstances connected with the execution of said conveyances, and by such foreclosure to transfer the property of said company to the hands and possession of said directors and their speculating friends.

And your orator further shows unto your honor that, as he has been informed and believes to be true, at the time of the execution of said conveyances, and for some time previous thereto, a majority of the board of directors of said company was composed of persons who had no in protecting the rights or property of the company, but who procured and used their positions as such directors merely for the purpose of speculating for their private and individual interests with the property of said company.

And your orator further shows unto your honor that, as he has been informed and believes to be true, at or about the time of the date of the conveyance first above referred to, at a meeting of the board of directors of said company, held in the city of Albany, in the State of New York, the five directors who were present, viz: A. C. Gunnison, Alfred Noxon, William A. Guest, J. H. Spear, and G. W. Luther, appointed said Gunnison, Noxon, and Guest a committee to act as the agents of said company in the disposition of the bonds to be issued and to be secured by said consequences; and that, as your orator is informed and believes, a large number of other and unsecured bonds were authorized to be issued at the same time and by the same authority; and that, at the same time and by the same authority, as your orator is informed and believes, several hundred other and unsecured bonds were placed in the hands of the said committee to be disposed of by them.

And your orator further shows unto your honor that, as he has been informed and believes to be true, a portion of the bonds known as the third mortgage bonds, purporting to be secured by said conveyances or mortgages, were thereafter issued and disposed of as follows: four hundred thousand dollars, deposited with Selah Chamberlain as a pretended collateral security for a pre-existing debt of twenty thousand dollars; one hundred and fifty thousand dollars, deposited with one Gilbert as a pretended collateral security for a pre-existing debt of seven thousand and five hundred dollars; one hundred thousand dollars, deposited with Gould and Watson as a pretended collateral security for a pre-existing debt of five thousand dollars; sixty thousand dollars, deposited with one Foster as a pretended collateral security for a pre-existing debt of three thousand dollars; five hundred and fifty thousand dollars, placed in the hands of Stoddard Judd ostensibly for the purpose of settling the farm mortgage debt of upwards of a million of dollars; and two hundred and forty-five thousand dollars, placed in the hands of Russel Sage ostensibly for the purpose of settling a judgment in favor of the Watertown and Madison road, a judgment in favor of Newcomb Cleveland, a judgment in favor of Sebre

Howard, and a judgment in favor of the Mercantile Bank of Hartford, Connecticut, said judgments having been recovered against the said La Crosse and Milwaukee Railroad Company previously to the execution of said conveyances or mortgages.

And your orator further shows unto your honor that, as he has been informed and believes to be true, no portion of the said farm
573 mortgage indebtedness was settled with the bonds so placed in the hands of Stoddard Judd as aforesaid, nor, as your orator is informed and believes, has any or either of said judgments been settled with the bonds so placed in the hands of Russel Sage as aforesaid.

And your orator further shows unto your honor that, as he has been informed and believes to be true, the said bonds, amounting in the aggregate to the sum of seven hundred and ten thousand dollars, so deposited with said Chamberlain, Gilbert, Gould & Watson, and Foster as a pretended collateral security for a pre-existing indebtedness, amounting in the aggregate to the sum of thirty-five thousand and five hundred dollars, were not deposited with such persons with any expectation that such indebtedness would be paid, except by a sale of said bonds, but that they were so deposited for the purpose and with the intention that the same should become forfeited, and that the said committee and their friends might be enabled to procure them at merely a nominal price, and hold the same with a show, in some degree, of good faith.

And your orator further shows unto your honor that, at the time of the issuing and disposing of said third mortgage bonds, that portion of the directors who caused the same to be issued had no intention or expectation, as your orator is informed and believes, that the first instalment of *of* interest, or any subsequent instalment of interest, or the principal, would ever be paid by the company, but that the same were issued and disposed of for the purpose and with the intention and expectation on the part of said directors that the said first instalment of interest should not be paid by the company, and that the said mortgage should be at once foreclosed for the principal amount pretended to be secured by said conveyances or trust deeds.

And your orator further shows unto your honor that, as he has been informed and believes to be true, no portion of said third mortgage bonds were ever disposed of in the regular course of business, or to any bona fide purchaser, without notice of their character and the circumstances under which they were issued; and that, as your orator is informed and believes, almost the entire amount of said bonds which were disposed of to persons claiming title to or ownership of them were so disposed of to the said directors or their friends, either without any consideration whatever, or for merely a nominal consideration, and not exceeding five cents on the dollar; and that, as your orator is informed and believes, if any of said bonds were disposed of to other persons, yet the same were disposed of to them under such circumstances, and at such trifling prices, that such persons did not become purchasers in good faith and without notice.

And your orator further shows unto your honor that, as he has been

informed and believes to be true, during the first four months after the issuing of said bonds only about one hundred thousand dollars of the same were disposed of to persons claiming any title to them, and a large amount of the same were disposed of after the commencement of the advertisement hereinafter mentioned.

And your orator further shows unto your honor that, as he has been informed and believes, on or about the first day of Feb-
574 ruary, the said William Barnes, at the request and instigation of the said committee, who collectively held and claimed to own over four hundred and fifty thousand dollars of said bonds, and at the request and instigation of a few other persons, acting in the interest of said committee, proceeded to advertise the property covered by said conveyances for sale at auction, on account of default in the payment of the first instalment of interest on the first day of January, A. D. 1859, and on or about the twenty-first day of May, A. D. 1859, the said William Barnes, in pursuance of such advertisement, made a pretended sale without having procured a judgment or decree for such sale of said property to himself for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, but that no portion of such money, except the costs of sale, was ever paid.

And your orator further shows unto your honor that, as he has been informed and believes to be true, on or about the twenty-third day of May, A. D. 1859, certain persons claiming to be the holders and owners of a majority of said bonds, pretended to form themselves into a corporation and assumed the name of the Milwaukee and Minnesota Railroad Company, and that thereafter the said William Barnes made a formal conveyance, without any consideration, of the pretended rights which he claimed to have acquired under said sale, to the said Milwaukee and Minnesota Railroad Company, and that about the same time the persons claiming to have created such new corporation made a formal election of directors of the said Milwaukee and Minnesota Railroad Company, and that such directors thereupon pretended to organize by the election of a president, vice-president, and secretary.

And your orator further shows that, as he has been informed and believes to be true, that among the pretended stockholders of said Milwaukee and Minnesota Railroad Company were the said committee, William A. Guest, who claimed to own and represent in his own name twenty thousand dollars of said stock, and Alfred Noxon, who claimed to own and represent in his own name eighty-six thousand and five hundred dollars of said stock, and A. C. Gunnison, who claimed to own and represent in his own name three hundred and forty-six thousand and six hundred dollars of said stock, and the said directors of the La Crosse and Milwaukee Railroad Company, George W. Luther, who claimed to own and represent in his own name five thousand dollars of said stock; also, N. P. Stanton, who was president of the said La Crosse and Milwaukee Railroad Company at the time of issuing said third mortgage bonds, who claimed to own and represent in his own name twenty-nine thousand dollars of said stock; also, the said Stoddard Judd, who claimed to own and represent in his own

name five thousand dollars of said stock; and also the said Russel Sage, who claimed to own and represent in his own name a very large amount of said stock, but what amount is unknown to your orator; and that they or some of such persons claimed to own a large amount of said stock which was represented in the names of other persons for their benefit.

And your orator further shows unto your honor that, as he has been informed and believes to be true, said Milwaukee and Minne-
575 sota Railroad Company, by virtue of said pretended sales and organization, has ever since claimed and still claims to be the successor of the rights, franchises, and property of the said La Crosse and Milwaukee Railroad Company, and to be the owner of such property, and to be entitled to the possession of the same, and threaten to take possession of such property.

And your orator further shows unto your honor that, as he has been informed and verily believes to be true, the said third mortgage bonds, and the said conveyances purporting to secure the same, were and are wholly void; that the said pretended sale of the said William Barnes to himself, and the said pretended sale of the said William Barnes to the said Milwaukee and Minnesota Railroad Company, and the said organization, so far at least as the same depended for its validity upon any former rights or property of the said La Crosse and Milwaukee Railroad Company, are wholly void, and that if the said Milwaukee and Minnesota Railroad Company is a corporation for any purpose, as it claims to be, yet it is not the owner, nor is it entitled to the possession of nor any control whatever over the said property of the La Crosse and Milwaukee Railroad Company.

And your orator further shows unto your honor that, as he has been informed and believes to be true, the said La Crosse and Milwaukee Railroad Company is the owner of a large amount of property, revenue, and equitable interests, which he has been unable to reach by execution, and by far greater in amount than would be sufficient to satisfy your orator's said judgment: and your orator is fearful the said defendants, the La Crosse and Milwaukee Railroad Company and Milwaukee and Minnesota Railroad Company, will make way with or place the same beyond the control of the court, or a court of law, unless restrained from so doing by an injunction from this court.

And your orator further shows unto your honor, that this bill of complaint is not exhibited by collusion with the said La Crosse and Milwaukee Railroad Company, or for the purpose of protecting its property and effects, or any part thereof, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the money due upon your orator's said judgment.

Your orator therefore solicits the aid of this honorable court, to compel said defendants, and each of them, true, full, and perfect answer to make to all and singular the statements and charges above set forth, but without oath, (answer under oath being hereby waived,) and that the said mortgage bonds, the said two conveyances purporting to secure the same, the said pretended sale made by the said William Barnes to himself, and the said pretended sale made by him to said

Milwaukee and Minnesota Railroad Company and the organization of the said Milwaukee and Minnesota Railroad Company, so far as it depends for its validity upon any rights or property previously owned by the said La Crosse and Milwaukee Railroad Company, may be decreed to be null and void; or that if, in the judgment of this court, the said Milwaukee and Minnesota Railroad Company is the owner of, or is entitled to the possession of any portion of the property of the said La Crosse and Milwaukee Railroad Company, the lien and right of the said Milwaukee and Minnesota R. R. Co. may be decreed to be subsequent and subordinate to the lien and right of your orator; and that your orator may be decreed to have a lien upon the property
576 of said La Crosse and Milwaukee R. R. Co. for the payment and satisfaction of his said judgment at and from the time of the sale and delivery of said passenger cars, and of the furnishing the materials and performing the labor for and in the construction of the said bridge; and that a receiver of the revenues, money, and property of every description of the said La Crosse and Milwaukee Railroad Company, with the usual powers and authority, may be appointed by this honorable court; and that the said La Crosse and Milwaukee Railroad Company may be directed to resign, transfer, and deliver to the said receiver upon oath, under the direction of a master of this court, all its property and effects, and all the books and papers relating thereto and the evidences thereof; and that your orator may have satisfaction for the sum due him on his said judgment, together with the costs and charges in this behalf, out of the said money, revenue, and effects of the said La Crosse and Milwaukee Railroad Company; and that the said defendants and each of them and their attorneys, counsellors, solicitors, agents, trustees, and servants, may be enjoined from collecting, receiving, selling, transferring, assigning, delivering, or in any way or manner using, controlling, encumbering, or disposing of any debts or demands due to said La Crosse and Milwaukee Railroad Company, or any real or personal estate, goods, wares, merchandise, account-books, books of record, bills, checks, promissory notes, bonds, mortgages, judgments or other securities, things in action, property or effects, whether in the name or possession of any other person or persons or corporations, for its use or benefit, or in trust for it, express or implied, except when such trust has been created by, or the fund held in trust has proceeded from, some persons other than the said La Crosse and Milwaukee Railroad Company, until the further order of this honorable court; and that the said La Crosse and Milwaukee Railroad Company may be decreed to pay your orator his costs and charges in this behalf, most wrongfully sustained; and that your orator may have such other or further relief in the premises, or both, as to your orator shall seem meet and shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator a writ of injunction issued out of and under the seal of this honorable court, directed to the said defendants, the La Crosse and Milwaukee Railroad Company, and Milwaukee and Minnesota Railroad Company, and to their attorneys, counsellors, solicitors, agents, trustees, and servants, there-

in and thereby, under a certain penalty in the said writ, to be expressed, commanding and enjoining them and each of them in manner as aforesaid, until the further order of this honorable court.

May it also please your honor to grant unto your orator a writ of subpœna, issued out of and under the seal of this honorable court, to be directed to the said La Crosse and Milwaukee Railroad Company and Milwaukee and Minnesota Railroad Company, commanding them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honor
577 shall seem agreeable to equity and good conscience; and your orator will ever pray, &c.

NATHANIEL S. BOUTON.

D. G. HOOKER, *Complainant's Solicitor.*
A. C. MAY, *of Counsel.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

On this 26th day of May, A. D. 1862, before me personally appeared Nathaniel S. Bouton, the above-named complainant, and who subscribed the foregoing bill of complaint, who, being by me duly sworn, did depose and say that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

EDWARD KURTZ, *U. S. Com., Dist. Wis.*

578 *Exhibit A.—Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

"No. —. United States of America, State of Wisconsin. $——.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of
dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and

eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

"In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

"————, *President.*

"————, *Secretary.*

"Registered and countersigned this 185 .

"————, *Trustee.*"

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are or hereafter may be or constitute the site of the road-ways, turnouts, engine-houses, workshops, depots, and

other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements and utensils and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, toge-
570 ther with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed, if said railroad had already been fully constructed and equipped. excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject nevertheless to liens already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars; also subject to a mortgage of four million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix: to have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and other things appertaining to the same, and to

use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustee and said railroad company, of, in, or to said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby

conveyed, or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee, in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be put to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust at the lowest price he can purchase the
580 same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased belonging to said sinking fund shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his

use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustee and said railroad company, of, in, or to said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby

conveyed, or intended to be conveyed; and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee, in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be put to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust at the lowest price he can purchase the
580 same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased belonging to said sinking fund shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his

trust, and be thenceforward discharged from all further duty or obligation in relation thereto: provided, such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto [SEAL.] affixed its corporate seal and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal, the day and year first above written.

La Crosse and Milwaukee Railroad Company, by
N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee—

CLARK, B.
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president, as aforesaid, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation,

and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and
[SEAL.] seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad
581 Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and
[SEAL.] seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named

corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

582 *Exhibit B.*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case

be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other, and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years no further sales shall be made, and the land unsold shall revert to the United States.

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road under the direction of the Post Office Department at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same. Approved June 3, 1856:"

And whereas the legislature of the State of Wisconsin subsequently passed an act approved October 11, 1856, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to

aid in the construction of railroads in said State,' approved June 3, 1856.

"The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

"SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route by the way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the
583 same rights, privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

"SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

"SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other Railroad Company as may desire a running connection with the same,

shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

"SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State in or to any and all the lands granted by the government of the United States to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled 'An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads,' approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company; and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Pro-*

vided, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

"SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of
584 the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

"SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter; and, in addition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company and to examine under oath the officers, agents, and employees of said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it

is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate and effects of said company, whether real, personal or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees and judgments against the said company. The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal or mixed, held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

"SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited quantities at fair prices, preference being given to actual settlers.

"SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water-craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water-craft as it may require.

"SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

"SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad, which by this act it is authorized to con-

struct, or any part of it, upon or over any route, upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured or destroyed, whatever the same is reasonably worth; such payment to be made in money, bonds, stock or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall con-
585 stitute a board of commissioners, whose duty it shall be to ascertain, determine and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

"SEC. 11. This act and all grants herein contained shall cease and be void unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

"SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

"SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two

newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

"SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

"SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

"SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force:"

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company, of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two million of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858. recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad Mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds, as therein particularly specified, all and singu-

lar the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces or parcels of land which constituted or might thereafter constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties and franchises, as by reference thereto will more fully and at large appear:

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance
586 of about two hundred (200) miles, and also the railroad of said company commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles; and also the railroad of said company commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given, to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the road-ways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage

and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads; and also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description. And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature which may be owned or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired;

and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed or intended to be conveyed unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States, or corporations lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment, at maturity, of the principal sum of money mentioned in
587 any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profit thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin the same shall be given. And

in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor that said company will, from time to time during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge any of his duties.

And it is hereby expressly declared, convenanted and agreed by the said railroad company, that the provisions herein contained for the security of said bonds are in addition to the provisions, liens and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.]

La Crosse and Milwaukee Railroad Company, by
N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

588 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president as aforesaid, freely, for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company. the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. 71 State street, in the city of Albany, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded September 1st, 1858, at 8 o'clock a. m.

Endorsed: Filed May 26, 1862.

And at the same time entered in the order and rule book an order that they show cause, by Monday, the second day of June next, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed according to the prayer of the bill on file. Whereupon a subpœna issued returnable the first Monday of July next, in the words and figures following, to wit:

589 UNITED STATES OF AMERICA, *District of Wisconsin:*

The president of the United States of America to the La Crosse and Milwaukee Railroad Company, and Milwaukee and Minnesota Railroad Company, greeting: [L. S.]

You are hereby commanded, that you personally appear before the judge of the district court of the United States of America, for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of July next ensuing, at Madison, to answer to a bill of complaint, exhibited against you in our said court, by Nathaniel S. Bouton, and to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty that may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said La Crosse and Milwaukee Railroad Company, and Milwaukee and Minnesota Railroad Company if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-sixth.

J. M. MILLER, *Clerk.*

D. G. HOOKER, *Solicitor.*

It is ordered by our said court, that the said La Crosse and Milwaukee Railroad Company, and Milwaukee and Minnesota Railroad Company, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise, the bill filed may be taken as confessed. And it is further ordered that they show cause by Monday, the second day of June next, at ten o'clock in the forenoon, why an injunction should not be issued, and a receiver be appointed, according to the prayer of the bill on file.

Filed June 2, 1862.

590 And afterwards, on the 2d day of June, 1862, came the marshal, and made return of the subpœna herein indorsed thereon, as follows, to wit:

Served on the within-named Milwaukee and Minnesota Railroad Company, by delivering Russell Sage, president, and Dwight W. Keyes, secretary of said company, each personally a copy of this subpœna, this 27th day of May, 1862.

D. C. JACKSON, *Marshal,*
By W. J. JACKSON, *Deputy.*

Service	$4 00
Travel	06
Copies	80
	4 86

Served on the within-named La Crosse and Milwaukee Railroad Company, by delivering Daniel L. Wells, president of said company, personally a copy of this subpœna, this 28th day of May, 1862.

D. C. JACKSON, *Marshal*,
By A. C. JAKCSON, *Deputy*.

Service	$2 00
Travel	06
Copy	40
	2 46

And afterwards, on the 7th day of July, 1862, came the complainant, by his counsel, and on his motion it is ordered by the court, that the defendants plead answer or demur to the bill of complaint on file by the first Monday of August next.

October 1, 1862, transferred to circuit court U. S. chancery docket A, page 258.

October 1, 1862, transferred and continued from the district court of the United States, chancery docket M, page 525.

And afterwards, on the 7th day of October, 1862, came the complainant, by his counsel, and on his motion it is ordered by the court that the defendants plead answer or demur to the bill of complaint on file by the first Monday of November next, or the bill will be taken as confessed.

October 8, 1862. This day the rule for an injunction, and for the appointment of a receiver, came on to be heard, and was submitted on the bill by Mr. Hooker, complainant's counsel, the defendants not appearing; whereupon it is ordered by the court, that Hans Crocker, the present receiver, be and hereby is appointed the receiver of the La Crosse and Milwaukee Railroad Company, under the bill, with all the powers of his original appointment.

October 9, 1862. This day came Mat. H. Carpenter, solicitor for the defendant, Milwaukee and Minnesota Railroad Company, and filed its appearance in the words and figures following, to wit :

U. S. circuit court, Wisconsin, in equity.

NATHANIEL S. BOUTON
vs.
LA CROSSE R. R. CO., AND MIL. AND MIN. R. R. CO.

To the clerk: Enter my appearance for the Mil. and Min. R. R. Co., in the above-entitled cause.

Yours, &c.,
MATT. H. CARPENTER,
Oct. 9, 1862. *Sol. for Mil. and Min. R. R. Company.*

And afterwards, on the , 1862, came the defendant, Milwaukee and Minnesota Railroad Company, by its counsel, and filed the affidavit of Moses Kneeland, in the words and figures following, to wit:

591 Circuit court of the United States for the district of Wisconsin, in the 8th circuit, in equity.

NATHANIEL S. BOUTON
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

DISTRICT OF WISCONSIN, *ss:*

Moses Kneeland, being first duly sworn, on oath says tha the is the president of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause; that he is advised by Matt H. Carpenter, the attorney and of counsel for said last-named company, that the defendant's costs in the above-entitled cause will exceed five hundred dollars, and that it will cost more than that sum to take the necessary testimony in said cause; that the said complainant is a non-resident of this State, and this affiant therefore prays said court that said complainant be required to give security for costs in this cause, in at least the sum of five hundred dollars, according to the course and practice of said court.

MOSES KNEELAND.

Subscribed and sworn to before me this 11th day of October, A. D. 1862.

EDWARD KURTZ, *U. S. Com'r Dist. of Wis.*

And on the same day, on motion of the defendant's counsel, it is ordered by the court, that the complainant file security for costs according to the rule, in the sum of five hundred dollars, and that proceedings be stayed in the mean time.

And afterwards, on the 29th day of December, 1862, came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its answer in the words and figures following, to wit:

592 In circuit court of the United States for the district of Wisconsin, in the 8th circuit, in equity.

NATHANIEL S. BOUTON
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, and the Milwaukee and Minnesota Railroad Company.

The separate answer of the Milwaukee and Minnesota Railroad Com- Company, one of the defendants to the bill of complaint of Nathaniel S. Bouton, complainant.

The said Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, saving and reserving all and all manner of benefit of exception to the many uncertainties, insufficiencies and

errors of and in the said bill of complaint contained, for answer thereunto, or unto so much, and such parts thereof, as the said company is advised, is or are material or necessary to be answered unto, answering says, that it has no knowledge, remembrance, information or belief as to any of the allegations in said bill of complaint contained, as to the said pretended indebtedness from the said La Crosse and Milwaukee Railroad Company to said firm of Stone, Boomer & Bouton, or the giving or exchanging of notes therefor, or the division of assets of said firm, but on information and belief says, that the other members of said firm, except said complainant, are now beneficially interested in the said judgment, if any, mentioned in said bill of complaint, or some part or portion thereof, and ought to be made parties to this bill, either complainants or defendants, and that said bill is defective for that reason; that the said defendant has no knowledge, information or belief, except as derived from said bill of complaint, in relation to the rendition of or proceedings upon said judgments mentioned in said bill of complaint, nor as to the amount due thereon.

And this defendant expressly denies, that on or about the 1st day of June, or at any other time, the said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud said complainant or any other person or persons, or creditors, of their lawful actions, debts and demands, executed under its seal the said mortgage or trust deed to said Barnes, a copy of which is said to be "Exhibit A" to said bill of complaint; but, on the contrary thereof, the said defendant answering says, that the same was made, executed in good faith for the uses and purposes therein mentioned and for no other use, purpose or intention whatsoever, and expressly denies that said last named company did, on or about the 11th day of August, A. D. 1858, or at any other time, with the intent to hinder, delay, or defraud the said complainant, or any other person or persons, of their lawful debts or demands, execute or deliver under its seal, to said Barnes, the said second and further deed, a copy of which is said to be "Exhibit B" attached to said complaint; but, on the contrary thereof, the said defendant says, that said last named deed was executed and delivered bona fide for the uses and purposes
593 therein mentioned and for no other use, object, intention or purpose whatever; and this defendant expressly denies that it was the object, intention or purpose of said La Crosse and Milwaukee Railroad Company, in making either of said conveyances to said Barnes, by a foreclosure of either or both thereof, to cancel or wipe out the entire stock or any of the stock of said company, and the entire or any of the unsecured debt of said La Crosse and Milwaukee Railroad Company, or by such foreclosure to transfer the property of said company to the hands or possession of said directors, or either of them, or to any friend or friends of them or either of them, speculating or practical, or otherwise, and denies that there was ever any director of said last named company who had no interest in protecting the rights and property of the said company, or who procured or used their positions as such directors merely for

the purpose of speculating for their private and individual interests with the property of said company or otherwise; and the said defendant expressly denies, that any of the bonds mentioned in said bill of complaint were ever deposited with any person or persons, with the expectation that the indebtedness for which they were deposited would not be paid except by a sale of said bonds, and says that every bond ever deposited by said company as collateral was deposited in good faith and not for any fraudulent purpose whatever, and not for the purpose or with the intention that the same should become forfeited, or that any person or persons might be enabled to procure them merely at a nominal price, or hold the same otherwise than actually in good faith.

And the said defendant expressly denies, that at the time of issuing or disposing of said mortgage bonds, any of the directors had no intention or expectation that the first instalment of interest or any subsequent instalment of interest or the principal would ever be paid by the company, and denies that the same were issued or disposed of for the purpose or with the intention or expectation on the part of said directors, or either of them, that the said first instalment of interest should not be paid by the said company, or that the said mortgage should be at once, or at all, foreclosed for the principal amount pretended to be and actually secured by said conveyances or trust deeds or either of them, and answering says, that all of said bonds ever disposed of by said company were disposed of in good faith, to bona fide purchasers who purchased or became the owners thereof respectively, in good faith, in due course of business, for valuable consideration and without notice of any defect in said bonds or mortgage, and says there was no defect whatever therein or in either of them or any of them.

This defendant, furthering answering, says that it has not now, had not at the time of the commencement of this suit, nor did it ever have or claim to have any possession of, or control over property, rights or other things belonging to the defendant, the La Crosse and Milwaukee Railroad Company, and denies that it has ever threatened or intended to, or thought of making way with anything whatever belonging to said last named company, and denies that it shall, whether restrained or not, make way with or place any property or thing of the said La Crosse and Milwaukee Railroad Company beyond the control of this court, or a court of law, or interfere
594 with the same in any way whatever.

This defendant, further answering, shows to the court that the La Crosse and Milwaukee Railroad Company is, and for more than five years last past has been, a corporation created by and existing under the laws of the State of Wisconsin, and that its business and affairs have been and are managed and controlled by a board of directors; that about the 21st of June, A. D. 1858, the said company was indebted in a large amount of floating debt accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company, and that a large number of the farmers

along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been before then used by the said company, with a stipulation on its part with and to said farmers to pay the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay as aforesaid had become due and the said company was enabled to pay the same, and proceedings were threatened against such farmers to enforce payments of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the first day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, A. D. 1858, make, execute, sign, acknowledge and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last named bonds and interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed, and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were or might thereafter be or constitute the site of the road-ways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted or might thereafter constitute or be a part of or appertain to said railroad, whether then made or to be made thereafter; and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built, or to be built and made thereafter; and also all and singular the locomotive engines, and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils and other personal property which had then been or might thereafter be procured for or used in connection with such railroad; and also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse,

together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and in the offices of the registers of deeds in the several counties through which said railroad passes and was then located; that on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplementary mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee, as aforesaid, in addition to the things in said first mortgage conveyed the following, that is to say: "all and singular the rights, privileges, liberties and franchises of said company of every kind and description, and also all lands granted or intended to be granted to said company under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed, and also all and singular the stock, railroad and other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses of whatsoever nature, which might be owned, or in which said company might have an interest, on such day as said company might first make default in the payment of the interest or principal, or any part thereof, which thereafter became due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given; that immediately thereafter the said Barnes caused said supplementary mortgage to be recorded as and in the same office as the first-named deed of trust or mortgage to said Barnes was recorded, as hereinbefore set forth, a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached hereto, and marked, respectively, Exhibit No. 1 and Exhibit No. 2.

And this defendant, further answering, says that immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by the said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold and delivered in payment and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such
596 persons against said company for materials furnished to and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been turned by them into the stock of the Milwaukee and Minnesota

Railroad Company, as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers, and owned, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter mentioned; that about the 1st of February, A. D. 1859, the said company having made default in the payment of part of the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the said State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st day of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage, and said supplementary mortgage to him, said Barnes, described; and the said Barnes, trustee, there and then, at said sale, became the purchaser thereof, according to the provisions of the laws of the said State of Wisconsin then in force in that behalf, at and for the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same, and that said mortgages thus became and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then in force; and that said Barnes, by virtue of said purchase, and the provisions of the laws of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises, and other things so purchased by him, and thereafter held the same in trust, and in trust only, for the holders of the then outstanding bonds secured by said mortgages; and that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted their business under and in pursuance of the charter of the said La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued, a corporation under and by virtue of the laws of said State, capable of suing and being sued, and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company so far as the same were in the possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

And this defendant, further answering, says that said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Com-

597 pany, viz: Russell Sage, N. J. Emmons, Hans Crocker, W. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William B. Sill, and L. A. Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company.

And this defendant, further answering, says that by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes, as hereinbefore set forth, that the said Milwaukee and Minnesota Railroad Company became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises and property, real and personal, and things in action, and effects of every nature and description before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes, and that the said Milwaukee and Minnesota Railroad Company being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company and purchasers at said foreclosure sale (in the manner hereinbefore stated) as corporators, has a legal right to object to, resist and set aside, any and all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments, which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company with intent to hinder, delay or defraud its creditors, and has the right to object to, resist and set aside every illegal, unjust or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises or other things whatsoever of said last named company which were embraced or described, or intended to be embraced or described in either of said trust deeds to said Barnes and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated.

And the said defendant, further answering, says that both of said mortgages or trust deeds were duly recorded in the offices hereinbefore in that behalf stated; and the bonds secured by said mortgages, or trust deeds, were duly sold to bona fide holders for value, and in due course of business, long before the rendition of said judgment in favor of said complainant mentioned in said bill of complaint, and that by the foreclosure of said mortgages, or trust deeds, as hereinbefore stated, this said defendant became the holder and owner of all the property, railroad, rights, privileges and franchises, and other things described in said mortgages or deeds of trust, discharged of and from any lien, charge or incumbrance by or on account of said judgment. And this defendant denies all and all manner of unlawful

combination and confederation wherewith it is by the said bill charged; and denies all and every allegation or allegations charging fraud or bad faith upon the said La Crosse and Milwaukee Railroad Company, or any officer or agent thereof, in said bill charged: all of which things this defendant is ready to verify, aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

MATT. H. CARPENTER, *Solicitor for the Milwaukee and Minnesota Railroad Company, Defendant.*

598 June 12, 1863. A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the court, and filed, in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Company and others, setting forth in substance that, in pursuance of a decree of this court in that case, the western division of the La Crosse and Milwaukee railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee and St. Paul Railway Company is a corporation organized under the laws of the State as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Company, who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Company, in opposition thereto; and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Company requiring that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division between Portage City and Milwaukee might affect the rights of the public and embarrass the free and proper operation of the whole road, as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company; and it being represented to the court that persons interested in the Milwaukee and St. Paul Railroad Company own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage: it is thereupon ordered by the court, that the order appointing a receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee and St. Paul Railway Company into the possession of the

eastern division of the La Crosse and Milwaukee railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated
599 and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And it is further ordered by the court, that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operation of the whole line of road, and that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other persons as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly, to the receiver, the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities.

And it is further ordered by the court, that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road, and the rolling stock and property, in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns and pay over the net revenues of said road according to this order.

August 3. 1863. On motion of M. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants to the bill of complaint of said Nathaniel S. Bouton, ordered that the

above-entitled suit be and hereby is dismissed as against the said Milwaukee and Minnesota Railroad Company.

April 28, 1864. This day ordered by the court, that the order of the 12th of June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were
600 placed in possession of the eastern division of the road, be, and the same is hereby rescinded, and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances and rolling stock received under said order, and all property relating to said eastern division.

601 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } Before the auditor.

We stipulate that copies of the several opinions of Hon. Andrew G. Miller, judge of the district court, and judge of this court in this cause, which has not already been given in evidence, may be handed to the auditor to-morrow, and considered in evidence as though heretofore given, subject to all objections as to their materiality or relevancy.

Dated May 29, 1865.

MATT. H. CARPENTER, *Sol. for some Def'ts.*
CARY & PRATT, *Sol's for Parties.*

Exhibit No. 26, filed May 29, 1865. H. L. PALMER.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } Before the auditor, H. L. Palmer, esq.

We hereby stipulate that the said H. L. Palmer, auditor, may have till the 10th day of June, A. D. 1865.

Dated May 29, 1865.

MATT. H. CARPENTER, *Sol'r for some Def'ts.*
CARY & PRATT, *Sol's for Compl'ts and M. and St. P. Co.*

Exhibit No. 27, filed May 29, 1865. H. L. PALMER.

U. S. circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

It is hereby stipulated and agreed, by and between the parties to

this cause, that the auditor may adjourn the further hearing of this cause until the 2d Monday of March, A. D. 1865, at 10 o'clock a. m., and that the auditor may make his report thereon on or before the 1st Monday of April next, instead of March next, and that the orders of reference herein may be modified by the court so as to conform to this stipulation. And it is further understood that exceptions to the report by any party shall stand for hearing on the first day of the next April term of this court.

November 14, 1864.

MATT. H. CARPENTER,
Sol. for certain Def'ts and for all for whom he appears.
JAMES S. BROWN, *Att'y for Receiver.*
CARY & PRATT, *for their Clients.*
THOMAS L. OGDEN, *Sol. for Compl't.*

Exhibit No. 28. H. L. PALMER.

U. S. circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

602 We hereby stipulate that the time for H. L. Palmer, auditor, to file his report upon the several matters referred to him in this cause, be, and the same is hereby, extended to and including the 19th day of June, instant, and that either party may file exceptions to the whole or any part of such report within five days after the same shall be filed in the office of the clerk of this court, this extension of time to have the same force and effect as if made by order of the court.

It is further stipulated that the monthly report of Hans Crocker, receiver, filed in this cause for the month of June, 1864, and the account presented to and returned by the auditor, and marked "Continuation of Exhibit E," shall be taken and considered and treated as the accounts required to be filed by the receiver by the order made in this cause on the 8th day of October, A. D. 1864, and shall be considered and treated as if the same had been filed in court, as required by said order, and had been duly excepted to by the defendants the Milwaukee and Minnesota Railroad Company and Alexander Fleming, and the auditor shall report thereon accordingly.

Dated June 10, 1865.

MATT. H. CARPENTER, *Sol'r, &c.*
CARY & PRATT, *Sol'rs.*
H. CROCKER, *Rec.*
THOMAS L. OGDEN, *Sol'r for Compl'ts.*

Exhibit No. 30. H. L. PALMER.

We stipulate that the auditor have four days' additional time to

make report, and each party to have five days after report filed to except thereto.

June 19, 1865.

MATT. H. CARPENTER, *Sol'r for Def'ts.*
CARY & PRATT, *Sol'rs for Compl't, &c.*
THOMAS L. OGDEN, *Sol'r for Compl't.*
JAMES S. BROWN, *Sol'r for Receiver.*

We stipulate that the time for the auditor to report be further extended to and including the 26th inst., with the same conditions as contained in the foregoing stipulations.

June 23, 1865.

CARY & PRATT, *for Compl'ts.*
THOMAS L. OGDEN, *Sol'r for Comp'ts.*
MATT. H. CARPENTER, *Sol'r for some Def'ts.*
JAMES S. BROWN, *Sol'r for Receiver.*

We stipulate that the time for the auditor to report be further extended to and including the 28th inst., and each party to have five days after report filed to except thereto.

June 26, 1865.

MATT. H. CARPENTER, *Sol'r for some Def'ts.*
THOMAS L. OGDEN, *Sol'r for Compl't.*
CARY & PRATT, *for Pl'ff.*
JAMES S. BROWN, *Att'y for Rec'r.*

603 *Receiver's rep. for May.*

And afterwards, to wit, on the 29th day of June, A. D. 1865, came the receiver and filed his report for the month of May, A. D. 1865, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILW. R. ROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of May, 1865.

H. CROCKER, *Rec'r.*

Balance on hand April 30, 1865	$38,930 45
Receipts: Milw. and St. Paul Railway Co	445 00
	39,375 45

Disbursements: Milw. and Minnesota R. R. Co., A. Fleming, v. pres't	$445 00
Balance May 31, 1865	38,930 45
	39,375 45

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of June, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And on the same day came the receiver and filed a statement of the earnings of the eastern division for the month of May, A. D. 1865, in the words and figures following, viz:

604 *Statement of the operation of the Milwaukee and St. Paul railway and its divisions for the month of May*, 1865.

EARNINGS.

From freight	$11,423 22
passengers	7,416 46
mails, rents, and miscellaneous	802 26
Total earnings	19,641 94

EXPENSES.

Repairs:	
Of road	$4,698 71
bridges	37 50
fences	66 00
buildings	177 44
locomotives	1,057 52
cars	1,192 70
tools and machinery	88 84
Operating:	
Management and general offices	452 66
Foreign agency and advertising	
Station service	1,869 26
Stationery	
Conductors, baggagemen and brakemen	673 92
Train and station supplies	127 05

Engineers, firemen and wipers	$925 10
Oil and waste	398 75
Fuel	1,192 00
Damage to property	.....
Loss and damage of freight and baggage	18 30
Personal injuries	
Legal expenses	572 49
Car service	.....
Miscellaneous expenses	68 32
Animals killed	.....
Freight earnings refunded	.....
Passenger earnings refunded	.....
Mail earnings refunded	.....
Telegraph	3 50
Printing and advertising	55 89
Other expenses:	
Interest and exchange	.....
New York office expenses	.....
Taxes, U. S. revenue	480 75
Renewal of track	
New buildings	
Rent	12 50
Total expenses	14,169 20

RECAPITULATION.

Gross earnings	19,641 94
Total expenses	14,169 20
Net earnings	5,472 74

Auditor's Office, Milwaukee, June 27th, 1865.

605 *Compl. ex. to report of auditor.*

And afterwards, to wit, on the first day of July, A. D. 1865, came the complainant, by his counsel, and filed exceptions to the report of the auditor in the words and figures following, viz:

U. S. circuit court, district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Exceptions taken by the complainant in this cause to the report of H. L. Palmer, esq., the auditor, to whom it was referred to ascertain the expenses attending this litigation.

First. For that the said auditor hath disallowed the claim of the

said complainant for services rendered as trustee, amounting to fifteen hundred dollars, which sum the said auditor should have allowed.

Second. For that the said auditor hath disallowed the claim of Prentiss Dow for services rendered as attorney in fact of the said trustees, amounting to the sum of seventeen thousand five hundred dollars, which sum the said auditor should have allowed.

Third. For that the said auditor hath disallowed the claim of F. A. Palmer for services rendered as attorney in fact for the said trustees, amounting to the sum of five thousand dollars, which sum the said auditor should have allowed, which he should have allowed at $509.

THOMAS L. OGDEN, *Sol. for Compl't.*

606 *Receiver's exceptions.*

And on the same day came the receiver, by his solicitor, and filed exceptions to the report of the auditor in the words and figures following, viz :

In the circuit court of the United States for the district of Wisconsin, in chancery.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Co. *et al.*

The exceptions of Hans Crocker, receiver, to the report of Henry L. Palmer, auditor, made in pursuance of the orders of this court, dated respectively April 28th, 1864, and October 8th, A. D. 1864, and April 17th, A. D. 1865.

1*st exception.* The said receiver excepts to so much of said report as allow to said receiver, as compensation, only the sum of ten thousand dollars per year for three years, but neglects and refuses to allow two and one-half per centum upon the gross receipts of him, the said receiver, from the road ; because said auditor should have allowed said Crocker two and one-half per centum upon the gross receipts of the road, to wit, the sum of one hundred and fourteen thousand four hundred and fifty-seven dollars and twelve cents.

JAMES S. BROWN, *Sol'r for Receiver.*

Mil. and Min. Co. exceptions.

And afterwards, to wit, on the 3d day of July, A. D. 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, and filed exceptions to the reports of the auditor, H. L. Palmer, esq., in the words and figures following, viz :

607 *Exceptions to auditor's report by Milwaukee and Minnesota Railroad Co.*

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Here in court comes Alexander Fleming, who, by leave of court, defends this cause in the name of the Milwaukee and Minnesota Railroad Company, and the Milwaukee and Minnesota Railroad Company and state and take exceptions to the report of Henry L. Palmer, esq., auditor, in this cause, and to different items and parts thereof, as follows, viz:

1 *exception.* That the said auditor has stated an account charging Hans Crocker, the receiver in this cause, with the earnings of the mortgage premises in this cause, and also with the earnings of the mortgage premises in a certain other cause, in which James T. Soutter and Shepard Knapp, survivors, are complainants, and the La Crosse and Milwaukee Railroad Company and others, defendants, pending or claimed to be pending in the district court of the United States for this district, and not in this court, in which cause said Crocker was also receiver; and crediting said Crocker with divers sums of money paid and disbursed by him as receiver in said last named cause under orders of court made therein, but not made in this cause; and allowing said Crocker as a credit, not only a salary for his services in this cause, but also a salary in said cause of said Soutter and Knapp, complainants, thus mingling together and treating as one fund the funds held in the last named cause and in this cause. Whereas the said auditor was required, and ought to have stated an account with the said Hans Crocker as receiver in this cause only, charging him only with the earnings of the mortgaged premises in this cause, and the proper interest, use, and rent therefor, and crediting him only with his disbursements and salary as receiver in this cause.

2 *exception.* That the said auditor has allowed as a credit to the receiver in this cause two payments of money made by him as receiver in the cause of James T. Soutter and Shepard Knapp, complainants, *vs.* The La Crosse and Milwaukee Railroad Company and others, defendants, as follows: June 29, 1861, $10,000; July 18, 1861, $20,000—thirty thousand dollars in all; which said cause
608 is, or is claimed to be, pending in the district court of the United States for this district, and not in this court. (See copies of orders returned by auditor.) Whereas said auditor ought to have disallowed said items, and only to have credited said Crocker with such sums as he has paid out as receiver in this cause, from the fund in this cause, in pursuance of orders of the court in this cause; and the said auditor had no authority to allow said receiver sums paid by him as receiver in another cause not referred to said auditor at al'.

3 *exception.* For that the said auditor has allowed said receiver a credit for the sum of $28,801 92, paid by him April 22, 1861, on a judgment rendered in favor of one Cleveland without any order of the court in this cause, directing such payment to be made, the only authority pretended for making such payment being an order by the judge of the district court. (See copy of order returned by auditor.) Whereas the auditor ought only to have credited said receiver with such sums as were paid by him under an order of the court, and to have disallowed this item. The order of Andrew G. Miller, judge, made out of court, and not even on a rule day, is no more protection to the receiver, or authority to him to pay out the fund which is in the custody of the court, than would be such order by the clerk, the marshal, or the crier of the court; and besides, the testimony shows that this order of the judge was granted ex parte without written application, and without notice to any of the parties in the cause. The disposition of funds or property in court that is in the receiver's hands is carefully guarded from abuse by the proper chancery practice. To justify such disposition upon a motion, it must be a case where the title of the party claiming is perfectly clear has been admitted or adjudicated; but even then there must be a motion, and notice of it must be given, not merely to opposite party through his solicitor, but must be served upon the party personally. And in those cases where the right is not established the court will not act on a motion thus noticed, but there must be a formal petition. 1 Barber Ch. Pr., 579; 1 Smith's Ch. Pr., 669; 2 Harrison Ch. Pr., 130, 0 paging; Heathcote *vs.* Edwards, Jacobs, 504; Ld. Sherbrook *vs.* Ld. Hinchenbrook, 13 Ves., 387.) The Cleveland judgment was not a lien upon the mortgaged premises. There is no statute of Wisconsin making judgments a lien upon railroads. The statute makes a judgment a lien upon real estate. So the statute authorizes real estate to be sold on execution; and whatever is real estate for the purpose of receiving the lien of the judgment, must be held liable to sale under the same terms in the statute concerning sales on execution. That such sale of a railroad and franchises cannot be made is pretty generally conceded. (Covington Drawbridge Co. *vs.* Shepard, 21 How., 112.) Liens of judgment rendered by the federal courts depend entirely upon State statutes. (Massingell *vs.* Downs, 7 How., 760; Williams *vs.* Benedict, 8 How., 157; Bank Tennessee *vs.* Horn, 17 How., 157.) Should this court be of opinion that the Cleveland judgment was a lien upon the mortgaged premises—railroad, rolling stock, and franchises—still its lien was subordinate to that of the mortgage for the benefit of which the receiver had been appointed in this cause, and Chamberlain was taking no steps to enforce its collection, either by creditors' bill on his own behalf, or by cross-bill in this cause. In his answer he sets forth this judgment, and prays that it may be paid out of the surplus arising on the sale. This did not make Chamberlain an actor in the cause, or entitle him to any affirmative relief as against co-defendants. This could only be done by a cross-bill. (Miller *vs.* McGalligan, 1 Green, (Iowa,) 527.)

4 *exception.* For that the said auditor has allowed said receiver a

credit for two sums of money paid by him under pretended orders of the district court of the United States for this district in this cause, of the dates and amounts as follows, viz: Nov. 28, 1862, to Chamberlain, on the Cleveland judgment, $15,000; February 19, 1863, to city Milwaukee, $600; at which times this cause was pending in this court, and not in the said district court, and both of said orders were and are for that reason absolutely null and void, and no authority or protection to said receiver for said payments. (Sec. 1, Wallace Rep. Sup. Ct. U. S. 405.) (See copies of orders returned by auditor.) Whereas the said auditor ought to have disallowed said sums for the reason aforesaid.

5 *exception.* For the said auditor has allowed and credited to the said receiver the several sums mentioned in exceptions 2d, 3d and 4th, hereinbefore, (except said item of $600,) amounting to $73,801 92, and reported on the same as follows:

"That the disbursements thus made by the receiver, and with which he is credited in his account, include the sum of seventy-three thousand eight hundred and one dollars and ninety-two cents, ($73,801 92,) paid on judgment in favor of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Company; and to this payment special exception is taken by the counsel for the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that the several sums paid by the receiver on said Cleveland judgment, making in the aggregate the said sum of seventy-three thousand eight hundred and one dollars and ninety-two cents, ($73,801 92,) were paid by him on the authority and in pursuance of two several orders made in the case of Greene C. Bronson, James
610 T. Soutter, and Shephard Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, at the dates and for the amounts following, viz:

June 29, 1861, ten thousand dollars	$10,000 00
July 18, 1861, twenty thousand dollars	20,000 00
And of two orders made in this cause of the dates and for the amounts following, viz: April 22, 1861, twenty-eight thousand eight hundred and one dollars and ninety-two cents	28,801 92
November 28, 1862, fifteen thousand dollars	15,000 00
	73,801 92

Copies of which orders are herewith returned, and marked, respectively, Exhibits E E E, F F F, G G G, H H H.

"And I further report that the said orders were sufficient and proper authority for the receiver to make such payments, and that the same were properly made by him. I therefore audit such payments, and allow and credit the same to the receiver at the said amount of $73,801 92, and disallow the said exceptions of the Milwaukee and Minnesota Railroad Company thereto."

Whereas the said auditor ought to have sustained the exception made to said items, and ought to have disallowed the same as credits

to the said receiver, and ought to have reported to this court that the said orders under which said payments were made were not, nor was either of them, any authority to the said receiver to make the same. (See copies of the orders returned by the auditor, and marked E E E, F F F, G G G, H H H.)

6 *exception.* For that the auditor has allowed to said receiver in this cause ten thousand dollars per year salary from his appointment in the cause of Soutter and Knapp, complainants hereinbefore mentioned, until on or about the 12th June, 1863—in all, $30,000; which allowance is made as compensation to said Crocker for his services in the cause of Soutter & Knapp, complainants aforesaid; and also allowed the said Crocker as salary at the rate of five thousand dollars per year from June 13, 1863, to March 1, 1865, $8,569 42 for services as receiver in this cause only since June 13, 1863—in all, $38,569 42—and has reported thereon as follows:

"I have ascertained and report that the sum of thirty-eight thousand five hundred and sixty-nine dollars and forty-two cents should be allowed to the receiver for his services as receiver from the 11th day of June, 1860, to and including the 28th day of February, 1865. This amount is made up as follows, viz:

For services as receiver from the 11th day of June, 1860, to the 11th June, 1863, three years, at $10,000 per year	$30,000 00
For services as receiver from the 11th June, 1863, to 28th February, 1865, one year, eight months and seventeen days, at the rate of $5,000 a year	8,569 42
Total	38,569 42"

Whereas the said auditor, on the testimony given before him, ought to have found and reported to the court that the said Hans Crocker, as receiver in this cause, has acted in bad faith, and been
611 guilty of misfeasance and malfeasance in his said office, in this: that he has colluded with the Milwaukee and St. Paul Railway Company to injure the property in his keeping as receiver, and lessen its revenues; and that the said Crocker, for that and many other reasons plainly appearing from the testimony before said auditor, merited no compensation whatever for his services, but ought rather to be attached and imprisoned for wilful breach of duty and violation of trust reposed in him as receiver as aforesaid. (See Crocker's testimony, printed, pages 63 to 82, filed herewith.) And whereas, conceding that such Crocker ought to be compensated, the auditor ought to have allowed him $5,000 a year for his services in this cause only, leaving said Crocker to seek compensation from the district court of the United States for said district for his services as receiver in the said cause of Soutter and Knapp, complainants aforesaid, claimed to be pending in that court, or from this court, in that cause; no matter or thing relating to the cause of Soutter & Knapp, complainants, having been referred to said auditor at all.

7 *exception.* For that the auditor has allowed as a credit the sum of $7,057 13 for new buildings erected by the Milwaukee and St.

Paul Railroad Company on the eastern division, and reported thereon as follows:

"Such disbursements include the sum of $24,998 36 expended for new buildings, comprising the two items contained in Exhibit C, under the head of new buildings, eastern division $12,757 88, and western division $14,240 48 also the sum of $7,057 13, being the item contained in Exhibit E continued, under the head of new buildings, for that amount. That portion of those expenditures assigned to the eastern division under the head of new buildings in Exhibit C, viz., $10,757 88, is especially excepted to by the Milwaukee and Minnesota Railroad Company in Exhibit K K K, and the expenditure of $7,057 13, being the item under the head of new buildings in Exhibit E continued, is also specially excepted to by the same party in and by Exhibit K K K continued. I have ascertained and report that the said amounts thus expended by the receiver, and credited to him in his said accounts, under the head of new buildings, were expended in the erection of new buildings which were necessary for the proper operation of the road, and that such expenditures were properly made and were reasonable, and I audit and allow the same to the receiver, and disallow the exceptions thereto."

Whereas the said auditor ought to have disallowed said item, $7,057 13, for the reason that said new buildings were erected without any order of court, and were unnecessary and improvident as expenditures upon the mortgage premises. See testimony of E. H. Goodrich, printed pages 106 and 107, filed herewith; manuscript testimony of Goodrich returned by the auditor.

8 *exception.* For that the said auditor has allowed as a credit the sum of $27,497 84 for new buildings erected by the Milwaukee & St. Paul Railway Company without order of court, and reported thereon as follows, viz :

"The item No. 28, contained on the credit side of the
612 account, 'Exhibit F,' new buildings, $27,497 84, is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that the sum was expended for the erection of new buildings on the machine-shop grounds in Milwaukee, extension of depot buildings, erection of water-houses, and other improvements, on the eastern division; that all these erections were not necessary for the eastern division, operated as a road commencing at Milwaukee and terminating at Portage City, and not forming a part of a through route to the Mississippi river; that these improvements were projected and commenced, and the expenditures mainly made, while the two divisions of the road were operated together as one through line, and before the opening of another route from Portage City to Milwaukee was contemplated, and that as the said railroad from Milwaukee and Portage City was then circumstanced these buildings and improvements were necessary to its proper and profitable operation, and the expenditure was properly and prudently made. I therefore audit and allow this credit, amounting to said sum of $27,497 84, to the Milwaukee and St. Paul Railway Company, and disallow the said exception thereto."

Whereas the said auditor ought to have disallowed said item of $27,497 84, for the reason that the same was not directed by any order of the court, and was an unnecessary and improvident expenditure upon the mortgaged premises in this cause. See testimony of E. H. Goodrich, printed pages (filed herewith) 106 and 107; manuscript testimony of E. H. Goodrich returned by the auditor.

9 *exception.* For that the said auditor has reported among other things as follows:

"I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter and Knapp *vs.* The La Crosse and Milwaukee Railroad Company, and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, survivor, &c., forty box cars, and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road on the 13th of June, 1863, belonged to and was owned by the owners of the eastern division of said road; that the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 88; that the value of the share owned by the Milwaukee and St. Paul Railway Company was $52,199, and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the
613 amount which should be charged to the respective parties for the use of rolling stock from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained, which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railroad Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division on the western division, and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the receiver by the Milwaukee and St. Paul Railroad Company, for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in Exhibit E continued, should be charged back to said company."

Whereas the said auditor ought to have reported that the Milwaukee and St. Paul Railroad Company was the owner of no part of the rolling stock purchased by the receiver, for the reasons, (1) that after the appointment of the receiver in this cause, and in the cause of

Bronson, Soutter and Knapp, respectively, and the taking possession of said receiver under said respective appointments, the mortgaged premises in this cause being the road from Milwaukee to Portage, and all the rolling stock except the 40 box-cars specially mentioned in the land grant decree, so called, it was the duty of the receiver in this cause to have charged the receiver in said land grant cause for the use of the eastern division rolling stock on said western division, and that had said charge been made for reasonable amount the said western division would have earned no net revenues previous to the land grant decree; therefore the Milwaukee and St. Paul Railway Company is entitled to none of said rolling stock purchased by the said receiver, and the auditor should have so reported and made his accounts accordingly for use of rolling stock. See testimony of E. H. Goodrich, printed testimony filed, pages 1 to 50, and 102 to 110. See manuscript testimony of E. H. Goodrich returned by the auditor.

10 *exception.* For that the auditor has not allowed any charge against the receiver, or against the Milwaukee and St. Paul Railway Company, for use of rolling stock belonging to the eastern division used upon the western division of said road, from the appointment of the receiver in this cause until the sale under the said land grant decree. Whereas the said auditor ought to have allowed and charged therefor against Hans Crocker, or against the Milwaukee and St. Paul Railway Company, therefor, over two hundred and fifty thousand dollars. See testimony of E. H. Goodrich before referred to.

11 *exception.* For that, upon the theory adopted by the said auditor for charging for use of the rolling stock, he has, in his report, made an error in computation of over one hundred thousand
614 dollars, and that said account reported against said Milwaukee & St. Paul Railway Company more than one hundred thousand dollars ought to have been reported over and above the sum actually reported for use of rolling stock from and after the sale under the land grant decree.

MATT. H. CARPENTER,
Sol. for Defendants excepting.

615 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Here in court comes the said Milwaukee and Minnesota Railroad Company, one of the defendants, and Alexander Fleming, who, by leave of court, defends in the name of said company, and excepts to the report of Henry L. Palmer, esq., auditor in this cause, made in pursuance of an order of reference made in this cause September 20, 1864, as follows, viz:

1 *exception.* For that the said auditor has allowed to the said complainants an item as follows: "For James S. Brown, for services as counsel in Supreme Court, $5,000," whereas the said auditor ought

to have allowed for the services of said James S. Brown in the Supreme Court only the sum actually paid said Brown, and which he agreed to accept in full for said service, viz: the sum of two thousand dollars. (See testimony James S. Brown, pages 132, 133, printed testimony, filed herewith.)

2 *exception.* For that the said auditor has allowed the complainants an item as follows:

"For David E. Wheeler, for services as local counsel for trustees in New York	$5,000
"Less amount paid heretofore	3,000
	2,000"

Whereas the auditor should have disallowed this item, there having been no evidence before said auditor that the said complainants had ever paid said Wheeler said two thousand dollars, or ever promised to do so, or that said Wheeler had ever rendered any services exceeding in value the three thousand dollars already paid him and allowed said complainant.

3*d exception.* For that said auditor has allowed the complainants an item as follows, viz:

"For J. M. Carlisle, for services as counsel in Supreme Court	$5,000
"Less amount heretofore paid	1,000
	4,000"

Whereas said auditor ought to have disallowed all of said item, except two thousand dollars, for the reason that no evidence was given before said auditor that said complainant had ever paid or agreed to pay said Carlisle above three thousand dollars; and the testimony showing that said Carlisle, after the service was rendered, agreed to and with said complainant or bondholders to accept two thousand dollars, in addition to the one thousand dollars which had been paid him, in full for his said services. (See testimony of James S. Brown, before cited.)

4*th exception.* For that said auditor has allowed said complainant an item as follows: "N. J. Emmons, for services as counsel for complainants in Supreme Court, $2,500," whereas the said auditor ought to have disallowed this item, there being no evidence that said complainants have ever paid or agreed to pay that sum to said Emmons, as counsel for said complainants in this cause, the said Emmons having been solicitor and counsel for one of the defendants in said cause.

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5*th exception.* For that said auditor has allowed the complainants an item for disbursements by Dow & Prentiss, on behalf of the trustees, as follows: "Paid steamer Keokuk, 573 74," whereas said auditor ought to have disallowed said item, the said complainants having had no authority under the terms of the mortgage or by any order of court to pay said sum.

By MATT. H. CARPENTER,
Solicitor for said Defendants, excepting.

Mil. and St. Paul Co.'s exceptions.

And on the same day came the Milwaukee and St. Paul Railway Company, by its solicitors, and filed its exceptions to the report of the auditor, H. L. Palmer, esq., in the words and figures following, viz:

617 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, filed in this cause on the 28th day of June, 1865.

First. The Milwaukee and St. Paul Railway Company excepts to so much of said report as disallows its claim for the use of rolling stock, as charged and cotained in Exhibits E and E continued, attached to said report, as follows, to wit: 1st. Item No. 39 of Exhibit E, for the sum of $166,192 30. 2d. Item No. — of Exhibit E continued. for the sum of $36,118 86. 3d. So much of item No. 38 of Exhibit E as was disallowed by said auditor, amounting to the sum of $17,179 69; all of which said amounts should have been allowed and credited as contained in said Exhibits E and E continued.

Second. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds that only forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, is owned by the Milwaukee and St. Paul Railway Company, and that all the remaining stock on the road on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road.

Third. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charges it for the use of the share of the rolling stock belonging to the eastern division on the western division, and on its other roads, from the 13th day of June, 1863, to the 28th day of February, 1865, the sum of $123,374 40; whereas the auditor should have found and reported that no part of said rolling stock which was on said road on the 11th day of June, 1860, when the receiver took possession, was in the possession or under the control of said receiver, or of the Milwaukee and St. Paul Railway Company as receiver, or in the custody or control of the court after the 12th day of June, 1863, but that the same was in the possession and control of the Milwaukee and St. Paul Railway Company as owner.

Fourth. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds that the tools and supplies belonging to the entire road belonged to the owners of the respective divisions of the road in proportion to the amount of the rolling stock owned by each.

Fifth. The Milwaukee and St. Paul Railway Company excepts to

said report so far as it finds that said Milwaukee and St. Paul Railway Company should be charged with the sum of $59,885 98 for supplies received by them June 13, 1863, and the sum of $34,757 50 for wood received at the same time; whereas such supplies and
618 wood are necessarily appurtenant to the road, and said report should have provided that the wood and supplies now on hand on said division should be received in lieu of those received by said Milwaukee and St. Paul Railway Company on said 13th day of June, 1863, or at least they should be so received to the extent of the value of the supplies and wood now on hand on said division.

JOHN W. CARY,
Solicitor for M. and St. P. R. W. Co.

Compl't's exceptions.

And afterwards, to wit, on the 5th day of July, A. D. 1865, came the complainant, by his solicitor, Mr. Ogden, and filed his exceptions to the auditor's report, with a stipulation endorsed thereon that the same might be filed, which said exceptions and stipulation are in the words and figures following, viz:

619 U. S. circuit court, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

Exceptions taken by the complainant in this cause to the report of H. L. Palmer, esq., the auditor, to whom it was referred to ascertain the expenses attending this litigation.

4th. For that the said auditor hath allowed James S. Brown for services as counsel in the Supreme Court the sum of five thousand dollars; whereas he should have allowed for such services only the sum of two thousand dollars.

5th. For that the said auditor hath not allowed to the trustees for moneys expended by them the sum of three thousand five hundred dollars, paid to James S. Brown on account of his services; whereas he should have allowed such sum to the trustee.

Third. For that the said auditor hath allowed to J. M. Carlisle for his services as counsel in the Supreme Court the sum of five thousand dollars; whereas he should have allowed for such services only the sum of three thousand dollars.

Fourth. For that the said auditor hath allowed to Thomas Ewing for services as counsel in the Supreme Court the sum of five thousand dollars; whereas he should have allowed for such services only the sum of three thousand dollars.

THOMAS L. OGDEN, *Sol'r for Compl't.*

Indorsed: Consent that above be filed.

M. H. CARPENTER, *Sol'r, &c.*

620 *Motion of receiver to strike papers from files.*

And afterwards, to wit, on the 5th day of July, A. D. 1865, came the receiver, Hans Crocker, by his counsel, and filed motion to strike papers from the files in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin, in chancery.

JAMES T. SOUTTER, SURVIVOR, &c.,
vs.
THE LA CROSSE AND MILWAUKEE Railroad Company *et al.*

And now comes the said Hans Crocker, the receiver, by James S. Brown, his attorney, and moves the court to strike from the files in this cause two certain papers, purporting to be exceptions taken by Alexander Fleming, defending by leave of court in the name of the Milwaukee and Minnesota Railroad Company, and by the Milwaukee and Minnesota Railroad Company to the reports of H. L. Palmer, auditor in this cause, for the reasons following, to wit:

1st. Because the longer of said papers (relating to accounts of the receiver) contains scandalous matter.

2d. Because it contains impertinent matter.

3d. Because said Fleming is not a party to, or interested in the suit, and the Milwaukee and Minnesota Railroad Company having appeared by counsel, cannot file exceptions jointly with said Fleming in manner and form as they have attempted.

4th. Because, except from surmise growing out of the contents, there is nothing on said papers referred to in the 2d reason to show to which of the said reports filed it is intended to apply.

5th. Because no copy of either of said papers or exceptions was served upon the receiver or his attorney, as required by the rules of court.

JAMES S. BROWN, *Att'y for Receiver.*

Answer of receiver.

And on the same day came the receiver by his counsel, and filed his answer to the petition of the complainant for possession of the eastern division, in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin, in chancery.

JAMES T. SOUTTER, SURVIVOR, &c.,
vs.
THE LA CROSSE AND MILWAUKEE Railroad Company *et al.*

The answer of Hans Crocker, receiver, to the petition of the complainant to be let into possession.

The respondent Hans Crocker, receiver, respectfully shows to the court that he is ready and willing at all times to surrender possession

of the premises held by him as receiver, when the court shall so require, but that he has paid out so large a part of the receipts that a sum large enough to cover his expenses and allowance by way of compensation does not remain in his hands; that to protect subsequent parties, he has, since the report of the auditor in this cause, paid out the sum of $38,000 on the interest due on the first mortgage; that according to the report of the auditor there are in suits already
621 commenced, claims to unliquidated damages in the sum of $20,000, and there are also other contingent liabilities growing out of the operation of the road, the extent of which it is impossible now to state; he therefore prays that whenever this court shall direct the surrender by the receiver of the road, an order may also be made for his final accounting, and that any sum found due him may be paid or secured, and that he have such further security against said liability as to the court may seem best and sufficient.

HANS CROCKER,
By JAMES S. BROWN, *his Att'y.*

Decision of motion to strike papers from files.

And on the same day, to wit, on the 7th day of July, A. D. 1865, came the parties by their counsel, and the motion of the receiver to strike from the files the exceptions to the report of the auditor, filed herein by the Milwaukee and Minnesota Railroad Company and Alexander Fleming, came on to be heard and was argued by counsel. Whereupon it is ordered by the court that the said motion be, and the same is, overruled as to the first, fourth, and fifth causes set forth in said motion; and as to the second and third causes, the remaining portion of said motion, it is ordered by the court that the words in the caption of the exceptions commencing with "Alexander Fleming" and ending with the word "and" be and the same is stricken out as surplusage; and it is further ordered that all of the third exception, commencing with the words "the order of Andrew G. Miller, judge, made out of court," be, and the same is, stricken out as surplusage.

Hearing of exceptions.

And the exceptions of the different parties to the reports of the auditor came on to be heard; whereupon it is ordered by the court that the exceptions shall be heard in the following order: First, the exceptions of the Milwaukee and St. Paul Railway Company; second, the exceptions of the Milwaukee and Minnesota Railroad Company; and third, the exceptions of the receiver; and the argument was commenced, and not being concluded, the further hearing was adjourned until to-morrow morning.

And afterwards, to wit, on the 8th day of July, A. D. 1865, came the parties by their counsel, and the hearing of the exceptions was resumed; and not being concluded, the further hearing was adjourned until Monday morning next.

And afterwards, to wit, on the 10th day of July, A. D. 1865, came the parties by their counsel, and the hearing of the exceptions was

resumed; and not being concluded, the further hearing was adjourned until to-morrow morning at nine o'clock.

And afterwards, to wit, on the 11th day of July, A. D. 1865, came the parties by their counsel, and the hearing of the exceptions was resumed; and being concluded, the court took the same under advisement.

And on the same day came the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and on its mo-
622 tion it is ordered that said company have leave to file an additional exception to the report of the auditor on the receiver's accounts, in regard to the use and repairs of rolling stock belonging to the eastern division used on the western division.

Additional exception.

And on the same day came the said company and filed said additional exception, in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, SURVIVOR, &c., *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The Milwaukee and Minnesota Railroad Company comes here into court, and takes and shows the court (by leave of the court expressly granted for that purpose) an additional exception to the report of H. L. Palmer, auditor, appointed to report on the receiver's accounts in this cause as follows:

12 *exception.* For that the said auditor has, in regard to the charge which the Milwaukee and Minnesota railroad claims should be made for use and repairs of rolling stock belonging to the eastern division, used upon the western division, reported to said court as follows, viz:
623 The said Exhibit E contains a credit to the Milwaukee and St. Paul Railway Company, under the head "Use of rolling stock," $166,192 30, marked No. 39, which is also specially excepted to by the Milwaukee and Minnesota Railway Company in and by Exhibit K K K; and I am also directed by the order made by the court in this cause on the 8th day of October, 1864, to "ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as a part of the accounts reported by" me. The disposition of the last-mentioned exception, and the proper performance of the duty imposed upon me by the order above mentioned, involve an inquiry into the ownership and amount of the rolling stock on the road on the 13th day of June, 1863; and I have ascertained and report that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter and Knapp *vs.* The La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Company *vs.* James T. Soutter, sur-

vivor, &c., forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the western division from the 11th of June, 1860, to the 13th day of January, 1862, bear to the net earnings of the eastern division for the same period of time, was owned by the Milwaukee and St. Paul Railway Company; and that all the remaining rolling stock on the road, on the 13th day of June, 1863, belonged to and was owned by the owners of the eastern division of said road. That the total value of the rolling stock on the said railroad on the 13th day of June, 1863, including the stock owned by the Milwaukee and St. Paul Railway Company, was $659,295 88; that the value of the share owned by the Milwaukee and St. Paul Railway Company was $52,199 00, and the value of the share owned by the owners of the eastern division was $607,096 88; that the respective owners of such rolling stock are each entitled to charge the other for the use of the rolling stock on the respective divisions of the road in the proportion of their ownership, as above stated, and are chargeable with the repairs of their respective shares of the rolling stock; that the evidence before me does not afford the data from which the amount which should be
charged to the respective parties for the use of rolling stock
624 from the 13th day of June, 1863, to the 28th day of February, 1865, can be ascertained with accuracy, but an approximate result is obtained which is believed to be substantially correct. I have ascertained and report that the Milwaukee and St. Paul Railway Company should be charged, in favor of the receiver representing the eastern division, for the use of the share of the rolling stock belonging to the eastern division, on the western division and on its other road, from the 13th day of June, 1863, to the 28th day of February, 1865, $123,374 40; that the sum of $36,118 86, charged to the receiver by the Milwaukee and St. Paul Railway Company for the use of rolling stock from June 30th, 1864, to February 28th, 1865, contained in "Exhibit E continued," should be charged back to said company;
625 which report shows that the sum allowed by the auditor, viz. $123,374,40, was arrived at by the auditor upon the supposition that Exhibit E and continuation of Exhibit E contained a credit for the use of a certain amount of rolling stock, down to February 28, 1865, and the report allows for the use of rolling stock belonging to the eastern division at the same rate for the different amount in value, whereas the said Exhibit E and continuation of Exhibit E did not contain any charge or credit whatever for rolling stock after September 1, 1864, as appears from the monthly reports filed in this cause, and as appears from the testimony of E. H. Goodrich, printed testimony, pages 102, 103, as follows, viz:

"Ques. In paper marked 'continuation of Exhibit E,' filed April 13, 1865, is an item, 'use of rolling stock, $36,118 86.' Does this item contain any charge for use of rolling stock subsequent to Sept. 1st, 1864?

"Ans. It does not as I understand it.

"Ques. When I understand that Exhibit E and continuation of Exhibit E show the amount charged the eastern division for the use of

rolling stock from June 13, 1863, to Sept. 1, 1864, is this correct?

"Ans. That is as I understand it.

"Ques. Since Sept. 1, 1864, when has the rolling stock been used which was on the old road when the receiver was appointed?

"Ans. It has been used on the road between Milwaukee and La Crosse by the way of Watertown, Columbus and Portage City, being the western division and the Watertown road."

Consequently the said sum allowed by the auditor does not contain any allowance for the use of rolling stock belonging to the eastern division used by the St. Paul Company upon its road from La Crosse to Milwaukee, by the way of Watertown, from September 1, 1864, to February 28, 1865. Whereas the said auditor should have allowed and reported for the use of the rolling stock belonging to said eastern division, used upon said western division from September 1, 1864, to February 28, 1865, the sum of 128,149 26 dollars, as shown by the testimony of E. H. Goodrich, printed page 106, and Exhibit Z Z Z, attached to said testimony.

This exception is filed, by special leave of court, as specification or more particular statement of exception eleven, heretofore filed by the Milwaukee and Minnesota Railroad Company.

MATT. H. CARPENTER,
Sol. for Mil. and Min. R. R. Co., Def't.

Order of court referring additional ex.

Whereupon on the same day, on motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, it is ordered by the court that H. L. Palmer, esq., auditor in this cause, make written report to this court in regard to matters embraced in the additional or 12th exception filed by said company to the said auditor's report on the receiver's accounts, and state and report whether any allowance has been made in and by his said report for the
626 use of rolling stock belonging to the eastern division used on the western division, or other roads operated by the Milwaukee and St. Paul Railway Company, from the first day of September, 1864, to the 28th day of February, 1865; and if not, report what sum should be allowed therefor; and ordered that said 12th exception be referred and transmitted to said auditor, to be returned by him to this court with his additional report thereon.

Argument of petition of compl'nt.

And on the same day, to wit, on the 11th day of July, 1865, came the parties, by their counsel, and the petition of the complainant for the possession of the eastern division of the La Crosse and Milwaukee railroad came on to be heard, and was argued by counsel, and the court not being fully advised, took the same under consideration.

Receiver's certif. of pay't of $48,000.

And on the same day came the receiver, and filed his certificate of the payment to him of $48,000 by the Milwaukee and St. Paul Railway Company, in the words and figures following, viz:

MILWAUKEE, *July* 11, 1865.

I hereby certify that the Milwaukee and St. Paul Railway Co. has at different times since the 28th day of February, 1865, paid me, as receiver, the sum of forty-eight thousand dollars, which has been applied by me in payment of the interest coupons on the city mortgage falling due March 1, 1865, and the coupons of the Palmer mortgage due May 1, 1865.

H. CROCKER, *Receiver*,
By W. L. HINSDALE, *Cash.*

Motion for attachment vs. Receiver et al.

And afterwards, to wit, on the 13th day of July, A. D. 1865, came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed notice of motion for an attachment against the receiver and others for contempt, in the words and figures following, viz:

627 *Motion to attach the receiver and for other purposes.*

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, SURVIVOR, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. and others.

To Hans Crocker, receiver, the Milwaukee and St. Paul Railway Company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederick P. James, George Smith, Asahel Finch, jr., William H. White, Alexander Mitchell, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Carey, Walter S. Gurnee, Washington Hunt, —— Wesley, and Daniel Wells, jr:

Please take notice that on the opening of the court on Thursday morning next, or as soon thereafter as counsel can be heard, a motion will be made in this cause, founded on the record in this cause,
628 and on all the papers and receiver's reports therein, and on affidavit of Alexander Fleming, copies of which motion and affidavit of A. Fleming are herewith served upon you.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Co., Defendant.

Dated July 9, 1865.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, SURVIVOR, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, by Matt. H. Carpenter,

its solicitor, and moves the court now here for an order directing an attachment to issue in this cause for the arrest of Hans Crocker, receiver in this cause, to be dealt with and punished for contempt of this court, in this: that the said Hans Crocker did fraudulently collude with the Milwaukee and St. Paul Railway Company and its officers and directors, heretofore, to wit, on or about the 12th day of June, A. D. 1863, and then permit said last named company and its
629 officers and directors to enter into possession of and thereafter to manage, operate, and control the mortgage premises in this cause, of which the said Hans Crocker was before then duly appointed receiver in this cause, and which was then in possession of the said Hans Crocker as such receiver, converting the rents, revenues, and tolls arising therefrom to the use of said last named company; and that the said Hans Crocker, by collusion with the said Milwaukee and St. Paul Railway Company, its officers and directors, did, on and after the 28th day of April, 1864, permit, and ever since has permitted, the said last named company and its officers and directors to continue in possession, management, operation, and control of the said eastern division of said La Crosse and Milwaukee railroad, so called, the mortgaged premises in this cause, together with the franchises, rolling stock, and property pertaining thereto, and convert the rents, tolls, and revenues thereof to their own use, in direct violation of an order of this court made in this cause on the day and year last aforesaid, of which said Crocker had notice, and in violation of the clear duty of said Crocker as receiver in this cause.

And the said Milwaukee and Minnesota Railroad Company further moves the court here for an order in this cause, directing an attachment to be issued against Russell Sage, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederick P. James, George Smith, Asahel Finch, jr., William H. White, Alexander Mitchell, George W. Rogers, and Selah Chamberlain, to be dealt with and punished for contempt of this court, in this: that the said Russell Sage, and other persons last above named, fraudulently colluded with Hans Crocker, receiver in this cause, on or about the 12th day of June, A. D. 1863, and by fraudulent permission and consent of said receiver did enter into possession of and thereafter did manage and control the mortgage premises in this cause, of which, as they then well knew, the said Hans Crocker had been duly appointed receiver in this cause, and which was then, as they well knew, in the possession of said Hans Crocker as such receiver, and did thereafter receive and convert to their own use, or to the use of the Milwaukee and St. Paul Railway Company, the rents, revenues and tolls thereof; and that the said Russell Sage, and the said persons named above as officers of the said Milwaukee and St. Paul Railway Company, did, on and after the 28th day of April, A. D. 1864, and until about the 1st day of July, A. D. 1865, continue in possession, management, operation, and control of the said eastern division of the La Crosse and Milwaukee railroad, so called, the mortgage premises in this
630 cause, together with the rolling stock and franchises pertaining thereto, and neglect and refuse to deliver the same to

said Crocker, receiver, and did convert the revenues, tolls, and rents thereof to their own use, or to the use of the Milwaukee and St. Paul Railway Company, in direct violation of an order of this court made in this cause on the day and year last aforesaid, of which they had notice.

And the said Milwaukee and Minnesota Railroad Company further moves the court here for an order directing an attachment to be issued to arrest Alexander Mitchell, S. S. Merrill, N. A. Cowdrey, John W. Carey, Horace Galpin, Walter S. Gurney, Washington Hunt, Frederick P. James, Selah Chamberlain, Russell Sage, ——— Wesley, Daniel Wells, jr., and David M. Hughes, the present directors of the Milwaukee and St. Paul Railway Company, for contempt of this court, in this: that they have knowingly and wilfully, since about the 1st day of July, A. D. 1865, as officers and directors of said last-named company, continued in possession of said eastern division of said railroad the mortgaged premises in this cause, receiving and converting to their own use, or the use of the said last-named company, all the rents, revenues, and tolls thereof, in direct violation of the order of this court in this cause, made April 28, 1864, directing the Milwaukee and St. Paul Railway Company to deliver said eastern division and all the rolling stock and property pertaining thereto to said receiver, of which order they had due notice.

And the said Milwaukee and Minnesota Railroad Company moves the court here for an order directing the sequestration of all property, rights, and franchises of the Milwaukee and St. Paul Railway Company within this district, and for the appointment of sequestrators thereof, unless the said company shall, upon a day certain, to be named in said order, pay into this court a certain sum of money to be named in said order, to indemnify the Milwaukee and Minnesota Railroad Company from all damage and loss in consequence of the Milwaukee and St. Paul Railway Company and its officers having entered into the possession of the said mortgage premises in this cause on or about the 13th day of June, A. D. 1863, and continuing to manage, control, and operate the same, and receiving and converting to its own use the rents, revenues, and tolls arising therefrom, well knowing that the said Hans Crocker had before then been appointed receiver thereof in this cause, and that the said Hans Crocker was then in possession of the same, as such receiver, in contempt of the authority of this court.

And the said Milwaukee and Minnesota Railroad Company moves the court here for an order directing the sequestration of all
631 the property, rights, and franchises of the Milwaukee and St. Paul Railway Company in this district, and for the appointment of sequestrators thereof, unless the said company shall forthwith return said eastern division of said railroad, the mortgaged premises in this cause, together with all the rolling stock and other property belonging thereto, to the receiver of this court, and shall upon a day certain, to be named in said order, pay into this court a certain sum of money, to be named in said order, to indemnify the Milwaukee and Minnesota Railroad Company, in consequence of the

said Milwaukee and St. Paul Railway Company, its officers and directors, having, from the 28th day of April, A. D. 1864, to the present time, continued in the actual management and control of the mortgage premises in this cause, and converting the rents, revenues, and tolls arising therefrom to the use of said company, in direct violation of the order made by this court in this cause on the 28th day of April, A. D. 1864, of which the Milwaukee and St. Paul Railway Company and its officers then had notice; and also to secure the payment into court by said last-named company of all sums of money in said company's hands arising from the operation of said mortgaged premises which it ought to pay into court in this cause.

And the said Milwaukee and Minnesota Railroad Company further moves, prays, and petitions said court, in case said court shall be of opinion that it is not entitled to the precise orders before mentioned, that said court will grant such other and further or different relief in the premises, as the nature of the case shall require, and as shall be agreeable to equity and good conscience.

632 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and that said company is a corporation existing under the laws of the State of Wisconsin, and that he is agent of said company, and as such agent has charge of its interests in this cause, and in all its other litigation in this court, that on or about the 8th day of May, 1863, Isaac Seymour, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederick P. James, George Smith, Asahel Finch, jr., William H. White, were elected or constituted directors of said company; and that afterwards, on
633 or about the 8th day of June, 1863, Alexander Mitchell, Russell Sage, George W. Rogers, and Selah Chamberlain were also elected directors of the said company, and so continued until about June 28, 1865; and that on or about the 28th day of June last the following named persons were elected directors of said company, viz: Alexander Mitchell, S. S. Merrill, N. A. Cowdrey, John W. Carey, Horace Galpin, Walter S. Gurnee, Washington Hunt, Frederick P. James, Selah Chamberlain, Russell Sage, ——— Wesley, Daniel Wells, jr., and David M. Hughes, and that said last-named persons now constitute the board of directors of said company; and that Alexander Mitchell is president of said company, as this affiant is informed and believes; and that said company is a corporation claiming to exist under the laws of the State of Wisconsin, and that the business of said last-named company was ever after June

13, 1863, and is now, transacted by the board of directors thereof.

This affiant further says, that immediately after the order made by the district court in this cause on the 12th day of June, A. D. 1863, modifying the order appointing the receiver in this cause, whereby the Milwaukee and St. Paul Railway Company were directed to be admitted into possession, among other things, of the mortgage premises in this cause, viz., from Milwaukee to Portage City, the said Milwaukee and St. Paul Railway Company, its officers and directors, under color and in pretended pursuance of said order, entered into possession of the following property and franchises then and now belonging to the Milwaukee and Minnesota Railroad Company, viz., the railroad from Milwaukee to Portage City, known as the eastern division of the La Crosse and Milwaukee railroad, together with all the rolling stock that was on the said La Crosse and Milwaukee railroad when the receiver was appointed, except forty box cars specially mentioned and described by their numbers in the decree in the cause of Bronson, Soutter and Knapp, complainants, against the La Crosse and Milwaukee Railroad Company and others, defendants, rendered by the district court of the United States for said district on the 13th day of January, A. D. 1862, together with all the rolling stock which was purchased by Hans Crocker, receiver in this cause, between the date of his appointment and the date of the decree in said last named cause; and all the franchises of the said La Crosse and Milwaukee Railroad Company, except such franchises of said last named company as
634 pertained to the railroads by said last named decree directed to be sold; and that the said Milwaukee and St. Paul Railway Company ever since has continued and now does continue to use, manage and operate the same, and that said last named company ever since the said 12th day of June, A. D. 1863, has converted and is now converting to its own use the tolls, revenues and profits arising therefrom.

This affiant further says, that immediately after the making by said district court of the said order of June 12th, A. D. 1863, the Milwaukee and Minnesota Railroad Company caused to be served upon the said Hans Crocker, receiver in this cause, and upon the Milwaukee and St. Paul Railway Company, as notice, a notice copy of which is hereto attached and marked Exhibit No. 1, as this deponent is informed and believes, and as appears from the affidavit of William J. C. Foster on file in this cause.

This affiant further says, that afterwards, to wit, on the 28th day of January, A. D. 1864, after the Supreme Court of the United States had decided that the said order made in this cause by the said district court was coram non judice, the said Milwaukee and Minnesota Railroad Company caused to be served upon the said Hans Crocker, receiver in this cause, due notice of said decision, a copy of which notice is hereto attached and marked Exhibit No. 2, as this affiant is informed and believes, and as appears by the affidavit of William J. C. Foster on file in this cause.

This affiant further says, that after the Supreme Court of the United States in this suit, by supplemental bill exhibited by the Milwaukee

and Minnesota Railroad Company against the Milwaukee and St. Paul Railway Company and others, had delivered and declared its opinion that the said Milwaukee and Minnesota Railroad Company was the owner of all the rolling stock on the La Crosse and Milwaukee railroad when said receiver was appointed, except said forty box cars hereinbefore mentioned, and such proportion of the rolling stock purchased by the said receiver as the net earnings of the said western division bore to the net earnings of the said eastern division, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company caused to be served upon said Hans Crocker, on the 10th day of April, 1865, and upon the said Milwaukee and St. Paul Railway Company, on or about the 6th day of April, 1865, a copy of the said opinion of the said Supreme Court of the United States, and that on the 13th day of March, 1865, caused a notice, a copy of which notice is hereto attached and marked Exhibit No. 4, to be served on said Hans
635 Crocker and said Milwaukee and St. Paul Railway Company, as this affiant is informed and believes, and as appears from the affidavit of William J. C. Foster now on file in this cause.

This affiant further says, that after the order made by this court in this cause vacating the aforesaid order in this cause hereinbefore mentioned, made by said district court in this cause on the 12th day of June, A. D. 1863, the Milwaukee and Minnesota Railroad Company, to wit, on the 2d and 3d days of May, A. D. 1864, caused to be served on said Hans Crocker, receiver in this cause, and on the Milwaukee and St. Paul Railway Company, a copy of said order of April 28th, A. D. 1864, duly certified by the clerk and under the seal of this court, together with a notice hereto attached and marked Exhibit No. 3, as this affiant is informed and believes, and as appears by the affidavit of William J. C. Foster on file in this cause.

This affiant further says, that the said Milwaukee and St. Paul Railway Company is entirely insolvent, and that its paper, to a large amount, has gone to protest, and that said last named company owes a floating debt exceeding one million of dollars, and that it has no property upon which an execution can be levied at law, as this affiant is informed and believes and thereupon states.

This affiant further says, that in consequence of the fraudulent collusion between the said Hans Crocker and the said Milwaukee and St. Paul Railway Company and the said officers and directors of said last named company, the said Milwaukee and Minnesota Railroad Company has been and is greatly injured and oppressed; that the said Milwaukee and St. Paul Railway Company claims to own and is actually operating a line of railroad between Milwaukee and Portage, by way of Watertown, which is a rival and competing line to the said eastern division, so called, and that the interest of the said Milwaukee and St. Paul Railway Company is directly opposed to the interest of the Milwaukee and Minnesota Railroad Company, and that said two companies are rivals and competitors for the transportation of passengers and freight between Milwaukee and La Crosse.

This affiant further says, upon information and belief, that the said Milwaukee and St. Paul Railway Company so manage and operate the

said eastern division as to prevent its coming into successful competition with the said line of railway operated by the said St. Paul Company, and that so the said Hans Crocker, receiver, well knows;
636 and that for six months last past the operation of the said eastern division has not only resulted in a total loss of all the revenues arising therefrom, but that the said Milwaukee and St. Paul Railway Company pretend that there is a deficiency chargeable against the same for the term of time aforesaid; that the said receiver has made and is making no efforts to secure for said eastern division any portion of the said business in relation to which the said two companies are rivals and competitors as hereinbefore stated, and that the said Hans Crocker, receiver in this cause, and the said Milwaukee and St. Paul Railway Company, and the officers and directors of said last named company, are fraudulently combining and colluding together to lessen the revenues of said eastern division, and make the rents, revenues and tolls arising therefrom as small as possible; all of which more fully and at large appears from the records and papers on file in this cause, and especially from the testimony and exhibits taken by H. L. Palmer, esq., auditor in this cause, and by him returned to and now remaining of record in said court in said cause.

This affiant further says, that by the order of this court made on the 28th day of April, A. D. 1864, a duly certified copy of which was served as hereinbefore stated, it was among other things ordered and directed that the Milwaukee and St. Paul Railway Company should return to the said receiver the said eastern division, so called, and its rolling stock and appurtenances, and all property relating to said eastern division; and this affiant further says, that had said last named order been obeyed by said Hans Crocker and said Milwaukee and St. Paul Railway Company, as they ought to have obeyed the same, and had the said receiver thereafter managed, operated and used the said eastern division, so called, and the rolling stock and franchises pertaining thereto, as the said receiver ought to have done, and as, under the order of this court appointing him receiver as aforesaid in this cause and the said last named order, it was his duty to manage and operate the same, a large amount of revenue might have been realized therefrom to be applied to the payment and satisfaction of the amount due the complainant in this cause, and for the payment and satisfaction of which this court pretends to hold the same by its receiver in this cause.

This affiant further says, that Isaac Seymour has departed this life.

Subscribed and sworn to before me, this day of July, A. D. 1865.

637 *Exhibit No.* 1.

MILWAUKEE, *June 20th*, 1863.

SIR: Please to take notice that the Milwaukee & Minnesota Railroad Company is the lawful and sole owner of all that part of the late La Crosse & Milwaukee Railroad, commencing in the city of Milwaukee and extending to the city of Portage, and all fixtures, rolling stock and personal property purchased for and appertaining thereto, and also of

all the corporate privileges, rights, and franchises appertaining thereto, and has the sole right and power to make all contracts affecting said property and rights. And you are forbidden by said Milwaukee and Minnesota Railroad Company to make any contracts for consolidation of said road and property with any other line or lines of railroad, or any contracts for the use and operation of said line of road and property, except the same be made with the said Milwaukee and Minnesota Railroad Company.

Take notice, further, that the order made by the district court of the United States for the district of Wisconsin, on the 12th of June, A. D. 1863, ordering the receiver in the case of Greene C. Bronson and James T. Soutter *vs.* The La Crosse and Milwaukee Railroad Company *et als.*, to deliver possession of said eastern division to the Milwaukee & St. Paul Railroad Company, was made without notice to either party in said cause, made on the court's motion without application in said cause by any party or person, made in the district court while the said cause was pending in the circuit court of the United States for the district of Wisconsin, and that said order was and is an absolute nullity; and the pretended possession of said eastern division by the so-called Milwaukee & St. Paul Railroad Co. is wrongful, and a contempt of the said circuit court, and that proceedings will be taken before the next term of said circuit court to punish the receiver, and hold his bail liable for his obedience to said wrongful and void order.

The Milwaukee & Minnesota Railroad Company, by
MATT H. CARPENTER, *Solicitor.*
LEVI HUBBELL, *of Counsel.*

638 *Exhibit No.* 2.

Circuit court of the United States for the ninth circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor of Greene C. Bronson, trustee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To Hans Crocker, esq., receiver in the above-entitled cause:

You will please take notice that the Supreme Court of the United States having decided that the order made by the district court of the United States for said district on the 12th day of June, A. D. 1863, under and by virtue of which you pretended to deliver possession of the railroad from Milwaukee to Portage City, together with the rolling stock and franchises pertaining thereto, to the pretended Milwaukee & St. Paul Railway Company, is *coram non judice*, and absolutely void. The Milwaukee & Minnesota Railroad Company, one of the defendants to the bill of complaint in the above-entitled cause, hereby demands of you that you immediately resume possession of said railroad franchises and rolling stock, and operate the same under the order of appointment in this case; and that you immediately collect from said pretended Milwaukee & St. Paul Railway Company, or the

persons pretending to be such corporation, all the rents, revenues, tolls and income received by it or them from the operation thereof since June 12, 1863; and that the Milwaukee & Minnesota Railroad Company will require you to account therefor in all respects as if said void order had not been made.

Dated January 20th, 1864.

MATT. H. CARPENTER,
Solicitor and of Counsel for the Milwaukee and Minnesota Railroad Company in the above-entitled cause.
A. C. GUNNISON,
Vice-President of said Company.
[SEAL.] DWIGHT W. KEYES,
Secretary of said Company.

639 *Exhibit No.* 4.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and others.

To Hans Crocker, esq., receiver in above-entitled cause:

SIR: Please take notice that in the suit by supplemental bill in favor of the Milwaukee & Minnesota Railroad Company against the Milwaukee & St. Paul Railway Company and others, (which bill was filed as a bill in the nature of a supplemental bill to the land grant foreclosure bill, so called, in favor of Bronson, Soutter & Knapp, against the La Crosse & Milwaukee Railroad Company and others, in which land grant foreclosure cause you were also receiver,) the Supreme Court of the United States has decided that only forty box cars and the proportion of rolling stock purchased by the receiver as described and as mentioned in the decree of foreclosure and sale in said land grant cause, a copy of which decree is hereto attached, marked Exhibit No. 1, passed to the purchasers at the sale under that decree, and that as between the Milwaukee & St. Paul Railway Company and the Milwaukee & Minnesota Railroad Company, the latter company is the owner of all the rolling stock which did not pass under said land grant sale as aforesaid, and that the same belongs to the eastern division of the La Crosse and Milwaukee Railroad Campany, of which you are still receiver in this cause.

Therefore, the Milwaukee & Minnesota Railroad Company again demands, as it heretofore has demanded of you, that you do immediately take possession of all of said rolling stock as belonging to said
640 eastern division, and operate so much thereof as may be necessary upon said division, and keep the balance safely and securely.

The Milwaukee & Minnesota Railroad Company will hold you personally and officially responsible for your neglect to comply with the

foregoing demand, as it will for your neglect of duty as receiver in this cause, in permitting the said rolling stock to be taken possession of by said Milwaukee & St. Paul Railway Company under the void order of the district court pretended to be made in this cause on the 12th day of June, A. D. 1863, and for your neglect and refusal to retain the same after you were notified that the Supreme Court of the United States had decided that said order of June 12, 1863, was void for want of jurisdiction in the said district court to make it, and for your neglect and refusal to reclaim the same after the circuit court aforesaid had in this cause and in the Howard cause, in which you were also receiver, vacated the said orders of the 12th of June, 1863, made in this and also in said Howard cause.

Dated March 13, 1865.

MATT. H. CARPENTER,
Solicitor for the Milwaukee & Minnesota Railroad Company.

641 *Exhibit No. —. Decree in western division foreclosure cause.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of the said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND Sheperd Knapp, trustees,
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace
642 Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William Fessenden, John L. Southland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, T. F. Bergen, G. S. Boardman, and John Nicholson. } In equity.

This day this cause came on to be finally heard at this term, upon

the bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Brodhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, the Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendants, Selah Chamberlain, J. Albert Helfenstein, trustee, in a mortgage or deed of trust of said company, defendants James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day. W. Catlin, Bruce & Young, John M. Tuft, Jonathan P. Hooper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Southerland, E. Haskell Derby, Frederick Levick, Charles Shepard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten,
T. F. Bergen, John J. Vanderbuilt, G. S. Boardman and John
643 Nicholson, and the replications thereto and proof, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report for interest on the bonds in the mortgage mentioned in this bill, numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds; and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage, numbered from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand six hundred dollars for principal of the sum; and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each, included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned in said mortgage of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds—which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds is found to be two millions seven hundred and ninety-four thousand dollars, be and hereby is confirmed.

And it is further ordered, adjudged and decreed by the court, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction, under the direction of the marshal for this district, unless the mortgagor, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered, that said sale be made at the post
644 office in the city of Milwaukee, within this district, and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city of La Crosse, and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants or the bondholders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bondholders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged and decreed by the court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz: all and singular the several tracts, pieces or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of

said road, whether now made or to be made hereafter, and all
645 the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been, or may hereafter be procured for or used in connection with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road; also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey and to vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing act of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company;" with forty box cars numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such portion or share of rolling stock purchased and procured by the receiver, costing
647 one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court, that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, or if the said sum be released or satisfied or paid into court, further proceedings under this decree shall be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said

mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in said bonds and mortgages, the court may, upon petition of the complainants, or the holders of the said bonds, by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition, and the subsequent proceedings thereon, and the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decree signed, recorded, and enrolled, January 13, A. D. 1862.
J. M. MILLER, *Clerk*.

648 *Exhibit No.* 3.

Circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

CHARLES HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and Selah Chamberlain.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILroad Company and others.

To Hans Crocker, esq., receiver of said court in each of the above-entitled causes; to the Milwaukee and St. Paul Railway Company:

The undersigned, the Milwaukee and Minnesota Railroad Company, one of the parties defendant to the bill of complaint in the last above-entitled cause, and the owner of all the railroad, rolling stock, franchises, and other property constituting the mortgaged premises in the mortgage to foreclose which the last above-entitled suit was commenced, gives you and each of you notice, and demands of you and each of you as follows, that is to say:

1. You and each of you are hereby notified that the above and foregoing papers, marked, respectively, Exhibits Nos. 1, 2, 3, and 4, are certified copies of orders made by the said circuit court and the district court of the United States for the district of Wisconsin in the respective causes in which they are entitled.

649 2. The undersigned therefore demands of you, the said Hans Crocker, that you instantly enter into possession of all the said mortgaged premises above mentioned as receiver as aforesaid, and the undersigned demands of you that you surrender possession thereof to the said Hans Crocker as receiver as aforesaid.

3. You and each of you are hereby notified that the undersigned is the owner of the equity of redemption of all said mortgaged premises.

4. You and each of you are hereby notified that the La Crosse and Milwaukee Railroad Company was, from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part, with and to said farmers, to pay the interest that might accrue thereon, and that a large sum of interest which said company was bound to pay as aforesaid had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred, in payment of said indebtedness of said company, and in payment of said interest, and to be used in about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the
650 residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were or thereafter might be or constitute the site of the road-ways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all other im-

provements on or appertaining to said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock, and all other equipments of every kind and description which had been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and, as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located. That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplement of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature, which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal, or any part thereof, which might thereafter become due on any part of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded, as in the same offices as the said first-named deed of trust or mortgage
651 to said Barnes was recorded, as hereinbefore set forth; a copy of which said first mortgage, deed or trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are marked, respectively, Exhibit No. 1 and Exhibit No. 2, to the answer of A Fleming, in the name of the undersigned, in the last above-entitled cause. That immediately thereafter said company commenced to deliver the last-named bonds so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary

and proper business of said company, and that all of said bonds were sold and delivered in payment and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to and services rendered for said company; and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned; that about the 1st of February, A. D. 1859, the said company having made default in the payment of or part of the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin, then in force, in that behalf, and the provisions contained in said mortgages or deed of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage, to him said Barnes described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin then in force in that behalf, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33;) no other person or body having made any bid whatever for the same, and that said mortgages thus became and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then in force; and that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force, became the owner of the property, and franchises, and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds, secured by *by* said mortgages; and
652 that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted its business under and in pursuance of the chapter of sale La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued a corporation, under and by virtue of the

laws of said State, capable of suing and being sued, and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the ime of said sale; that said bondholders at said new organizationt elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz: Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and —— Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota railroad, and that neither the La Crosse and Milwaukee Railroad Company nor any subsequent incumbrancer or encumberances, nor any other person or persons, did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf; that by virtue of said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes, as hereinbefore set forth, and the said promises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and liens and incumberances thereon as were prior to said first deed to said Barnes, and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, [in the manner hereinbefore stated,] as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company with intent to hinder, delay, or defraud its creditors, and has the right
653 to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last named company which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated, and has the right to collect and enforce all actions and causes of action

existing in favor of said La Crosse and Milwaukee Railroad Company and conveyed by said trust deeds to said Barnes or either of them.

5. That one of the liens upon the said property of which the undersigned became owner as aforesaid was a certain mortgage from said La Crosse and Milwaukee Railroad Company to Greene C. Bronson, James T. Soutter, and Shephard Knapp, trustees, upon the foreclosure of which you, the said Milwaukee and St. Paul Railway Company, claimed to have been organized under the laws of the State of Wisconsin; that the said mortgage last above mentioned conveyed the railroad from Portage City to La Crosse, known as the western division of the La Crosse and Milwaukee railroad, together with the rolling stock which at the date of said mortgage had been, or might thereafter be, procured for or used on said western division, and conveyed no other rolling stock; that the mortgage to foreclose which the last above entitled cause was commenced conveyed that part of the La Crosse and Milwaukee railroad which is from the city of Milwaukee to the city of Portage called the eastern division, together with all the rolling stock which at the date of said mortgage had been or might thereafter be procured for or used on said eastern division; that at and about the time of the last above-entitled cause the said Bronson, Soutter and Knapp commenced a suit in the said district court to foreclose the said mortgage on said western division; that the undersigned was made a party defendant to said last-named cause as the owner of the equity of redemption of said mortgaged premises, and that the said cause last named, together with the said cause last above entitled, being the suits to foreclose the two mortgages on said eastern and western divisions, respectively, proceeded together, and were pending simultaneously in said district court until on or about the 11th day of March, A. D. 1861, when the said district court, for the purpose of ascertaining the amount of rolling stock which was included in and covered by the said mortgage on the western division to Bronson, Soutter and Knapp, made an order in each of said foreclosure suits to three special masters, with directions, among other things, to ascertain and report the whole amount of rolling stock on the whole road from Milwaukee to La Crosse, and directing said masters in each of said causes to specify in their said report the quantity thereof included in and covered by the mortgage to the said Bronson, said Soutter, and said Knapp; and that such proceedings were thereupon and thereafter had before the said masters that afterwards, on or about the 7th day of October, 1861, they made and filed their reports in each of said foreclosure causes, and in each of said causes

654 said masters reported to said court that of all the said rolling stock on the whole of said railroad from Milwaukee to La Crosse at the date of filing the bill of complaint in said eastern division mortgage cause, there was included in and covered by the said mortgage to the said Bronson, Soutter and Knapp only forty box cars, amounting, at the cost price thereof, to thirty-one thousand one hundred and seventy-nine dollars and sixty-four cents, said cars being numbered, respectively, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374,

376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and that said mortgage to said Bronson, Soutter and Knapp covered and included no other rolling stock whatever. That thereupon, in the said suit of said Bronson, Soutter and Knapp, the said complainants excepted to said report, according to the course and practice of said court, "for that the said masters in and by their said report in said cause certified that all the rolling stock on the whole of said road, except the said forty box cars above mentioned, was covered by and included in the said mortgage to said Bronson and Soutter on the eastern division, and not in the said mortgage to the said Bronson, Soutter and Knapp; whereas the said complainants claim in and by said exception that the said masters ought to have certified that all the rolling stock on the whole of said road, except that purchased by the receiver since the commencement of that suit, amounting to the sum of fifty-three thousand and six hundred dollars, was covered by and included in the mortgage given to the said Bronson, Soutter and Knapp, and that said mortgage was a first, prior, and superior lien upon the same; and that as to said rolling stock purchased by said receiver, 105-200 thereof was covered by and included in said mortgage, and from the said report of the said masters the said complainants in said cause appealed to said court." Thereupon such proceedings were had in said court in said cause of the said Bronson, Soutter and Knapp, that on the 7th day of January, A. D. 1862, that the said report of the said masters in said cause in that behalf be so modified that all said rolling stock that was on said road when said receiver was appointed, except the said forty box cars, was declared to be covered by and included in and to belong to the mortgage on said eastern division, and that all the rolling stock on said road purchased by the receiver be applied on the mortgage on the eastern division and the mortgage on the western division in proportion to the net revenues of such portions of the road as said mortgages respectively covered since the appointment of the receiver, and said exception of the said complainants was overruled in all other respects; and that afterwards, on the 13th day of January, 1862, the said district court in the said cause made a decree foreclosing said mortgage and ordering the sale of said premises in said cause, with said forty box cars and said proportion of rolling stock purchased by said receiver, and the said decree declared that all of the rolling stock on said road, except said forty box cars and said proportion purchased by said receiver, belonged to and was covered by the mortgages on said eastern division, and that afterwards the said complainants proceeded to execute said decree by sale, and have never appealed therefrom, and said decree now remains in full force and unreversed;
655 that all the said proceedings now remain of record in said respective causes in said circuit or district court; that they are all open to your inspection, and for details and particulars you are hereby referred thereto.

The undersigned therefore demands of you, Hans Crocker, that you, as receiver as aforesaid, instantly take possession of all the rolling stock which was on said railroad from Milwaukee to La Crosse,

or belonged thereto at the time you were appointed receiver as aforesaid, and of all the rolling stock purchased by you as receiver, except the said forty box cars and the said proportion of rolling stock purchased by you, which was by said decree in the said Bronson, Soutter and Knapp suit ordered and decreed to be sold.

You will further take notice that of all the rolling stock purchased by you, the said Hans Crocker, as receiver as aforesaid, no part thereof belonged to or was covered by the said mortgage to the said Bronson, Soutter and Knapp, because, including the whole time of your holding said road as receiver down to the time of the decree in the said Bronson, Soutter and Knapp suit, the said western division of said railroad had earned nothing above the expenses of operating the same.

The undersigned therefore claims and demands of you, the said Hans Crocker, that you take instant possession, as receiver as aforesaid, of all the said rolling stock upon the whole of said road, except the said forty box cars hereinbefore mentioned, and the undersigned hereby demands of you, the Milwaukee and St. Paul Railway Company, that you instantly deliver to the said Hans Crocker, as receiver as aforesaid, instant possession of the said railroad from the city of Milwaukee to the city of Portage, together with all its appurtenances and franchises, and all the rolling stock which was upon the whole La Crosse and Milwaukee railroad, or appurtenant or belonging thereto at the date of said decree in the said Bronson, Soutter and Knapp suit, except the said forty box cars hereinbefore mentioned.

The Milwaukee and Minnesota Railroad Company, by

DWIGHT W. KEYES,
Secretary of said Company.

[SEAL.] MATT. H. CARPENTER,
Sol. for said Company.

656 *Report of auditor to additional ex'n.*

And afterwards, to wit, on the 14th day of July, A. D. 1865, came the auditor, H. L. Palmer, esq., to whom was referred the additional (being the 12th) exception of the Milwaukee and Minnesota Railroad Company to his former report, and filed his amended report, in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others. } In equity.

To the hon. the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the eleventh day of July, A. D. 1865, and hereto annexed, I, Henry L. Palmer, auditor named therein, do certify and report that I have ex-

amined the 12th special exception filed on behalf of the Milwaukee and Minnesota Railroad Company to the report heretofore made by me in this cause, and the subject-matters therein referred to, and have reviewed the portion of my former report in said exception mentioned and the evidence taken before me on which the same was founded; that Exhibit E annexed to the testimony heretofore returned purports on its face to be an account of the earnings and expenditures of the eastern division of the La Crosse and Milwaukee railroad from June 13th, 1863, to June 30, 1864, inclusive, and Exhibit E continued, purports to be a similar account covering the time from the 1st September, 1864, to the 28th day of February, 1865. These accounts both contain credits to the eastern division for the use of rolling stock belonging to it by the Milwaukee and St. Paul Railway Company. These credits formed a material element in the computation made by me to ascertain the amount of property chargeable to the Milwaukee and St. Paul Company for the use of rolling stock of the eastern division, and the amount chargeable to the Milwaukee and St. Paul Company, as ascertained and reported in my former report, to wit, $123,374 40, was based upon the understanding by me that the credit contained in Exhibit E continued, "Earnings from use of rolling stock on western division, $5,767 53," was for use of rolling stock of eastern division by the Milwaukee and St. Paul Railway Company for the entire time from June 30, 1864, to February 28, 1865. On examination of the monthly reports of the earnings and disbursements of the eastern division for the months of September, October, November, and December, 1864, and the months of January and February, 1865, on file in the office of the clerk of this court in this cause, shows that Exhibit E continued contains no charge or credit for the use of rolling stock for any period of time subsequent to the 31st day of August, 1864, and I therefore report that the said sum heretofore reported by me, that is to say, $123,374 40, as chargeable to the account of the Milwaukee and St. Paul Railway Company for the use of the
657 rolling stock of the eastern division of the La Crosse and Milwaukee railroad is chargeable to the said company for the use of such stock from the 13th day of June, 1863, to the 31st day of August, 1864, and that the account against the Milwaukee and St. Paul Railway Company, as stated in Schedule second, annexed to my former report, does not contain any charge against the said company for the use of the rolling stock belonging to the eastern division from the 1st September, 1864, to and including the 28th day of February, 1865.

I further report that I am unable, from the evidence before me on the former reference, to ascertain accurately what sum should be charged the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from September 1, 1864, to Feb. 28, 1865, for the reason that the testimony does not show what amount of the rolling stock in value or what particular stock in kind of that belonging to the eastern division was used on the roads of the St. Paul Company after September 1, 1864. I can only arrive at an approximate result. The cost of the entire mileage or the value of the use of all the rolling stock on the roads of the Mil-

waukee and St. Paul Railway Company from Sept. 1st, 1864, to Feb'y 28th, 1865, I ascertained by multiplying the mileage of each class of rolling stock, as shown in Exhibit Z Z Z, by the value or cost of the mileage, that class as given in the testimony of E. H. Goodrich, esq., page 104 of printed testimony, and thus ascertain and report that the whole cost of the mileage on the roads of the St. Paul Company, or the value of the use of all the rolling stock used thereon for the period of time mentioned, was as follows:

Locomotives, 434,577 miles, at 25 c	$108,644 2
Passenger cars, 465,933 miles, at 5 c	23,296 65
Baggage, mail, and express cars, 230,172 miles, at 3 c	6,905 16
Freight, 1,514,469 miles, at 2 c	30,289 38
Total	169,139 44

All the rolling stock on the road when the receiver took possession of it, June 11, 1860, was used on the road of the Milwaukee and St. Paul Railway Company after September 1st, 1864, as appears by the testimony. How much of that purchased and built by the receiver, amounting in value to $147,985 99, was so used, and how much of it was used on the eastern division after that date, I am unable to determine from the testimony. I assume that all the rolling stock on the road on the 1st September, 1864, except that portion of the stock purchased and built by the receiver, which in the decree in the land grant case was adjudged to belong to the eastern division, amounting in value to $121,178 00, was used after that date on the roads of the Milwaukee and St. Paul Company, and that the last-mentioned share of the stock remained after September 1st, 1864, on the eastern division. I assume that the stock purchased and built by the Milwaukee and St. Paul Railway Company, and in use on its roads from September 1st, 1864, to February 28, 1865, was of the same value as similar stock theretofore on the road. The whole value of the rolling stock, exclusive of that purchased and built by the Milwaukee and St. Paul Railway Company, was $659,295 88

Of this it is assumed that there remained in use on the eastern division after September 1, 1864, its
658 share of the stock acquired by the receiver 121,178 00

Balance 538,117 88

To this balance, which was thereafter used by the Milwaukee and St. Paul Railway Company on its roads, $538,117 88

Add the amount of the stock purchased and built by the Milwaukee and St. Paul Railway Company, amounting, at the same valuation as the other stock shown by Exhibit No. 7, to 412,378 14

And this amount 950,496 02

Is the aggregate value of the rolling stock in use on the roads of the

Milwaukee and St. Paul Railway Company from September 1st, 1864, to Feb. 28, 1865.

Of this amount of stock	$607,096 88
Less the amount of stock purchased by the receiver and supposed to have been retained and used on the eastern division, viz	121,178 00
That is to say	485,918 88

belonged to the eastern division; and such proportion of the entire cost of mileage of the rolling stock on the roads of the Milwaukee and St. Paul Company, from September 1st, 1864, to Feb. 28, 1865, as this amount bears to the whole amount of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company during the period of time mentioned, should be charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division, in addition to the sum charged to said company in the account as stated in Schedule second, annexed to my former report. And I have ascertained and report that the amount which should be so charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from September 1st, 1864, to Feb. 28, 1865, is eighty-six thousand four hundred and sixty-six $\frac{54}{100}$ dollars, ($86,466 54,) and this sum should be added to the balance of the account against said company, as shown by Schedule second, annexed to my former report.

And I further report that if it shall be ascertained that 52½ per cent. of the stock acquired by the receiver, and the stock on the road when the receiver took possession, was taken by the Milwaukee and St. Paul Railway Company and used upon its roads after September 1st, 1864, leaving only 47½ per cent. of the stock acquired by the receiver on the eastern division, or if it shall be deemed more equitable to assume that such was the fact than to adopt the theory upon which I have ascertained the amount chargeable to the Milwaukee and St. Paul Company, as above stated, the following results will be attained:

Whole value of use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company from 1st September, 1864, to 28th February, 1865, as above stated, $169,139 44; whole value of rolling stock in use on the roads of the Milwaukee and St. Paul Railway Company from September 1, 1864, to Feb. 28th, 1865, $1,001,380 67; amount of the same belonging to the eastern division, $536,803 53; amount chargeable to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division from the first of September, 1864, to the 28th February, 1865, both inclusive, upon this basis, ninety thousand six hundred and sixty-seven $\frac{31}{100}$ dollars, ($90,667 31.)

July 13, 1865. H. L. PALMER.

659 *Motion for attachment continued.*

And on the same day, to wit, on the 14th day of July, 1865, came the Milwaukee and Minnesota Railroad Company and presented to the court its motion and petition for a writ of attachment against

Hans Crocker, receiver, and others, heretofore filed, and moved the court that the same be set down for hearing on Monday next, and was argued by Hon. Caleb Cushing in support of, and by Mr. Brown on behalf of the receiver, and by Mr. Cary on behalf of himself and others against the hearing of said motion at the present term of this court; and on consideration thereof it is ordered by the court that the hearing of said motion be, and the same is, continued until the next term of this court.

And afterwards, to wit, on the 15th day of July, A. D. 1865, came the parties, by their counsel, and the motion of the Milwaukee and Minnesota Railroad Company, that the receiver take immediate possession of the rolling stock belonging to the eastern division, came on to be heard, and came the Milwaukee and St. Paul Railway Company, by Mr. Cary, and filed its answer to the petition in that behalf by leave of the court first had and obtained; which said answer is in the words and figures following, viz:

Answer of Mil. and St. Paul Co.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The Milwaukee and St. Paul Railway Company, protesting that it is not a party to this action and in no way subject to the jurisdiction of this court in this action on this proceeding, by way of denial of the petition of the Milwaukee and Minnesota Railroad Company, filed in this cause on the , respectfully shows to this honorable court, that the possession by this company of the rolling stock which was on the La Crosse and Milwaukee railroad on the 11th day of June, 1860, when Hans Crocker, receiver, took possession of the same, is not wrongful or illegal, or a contempt of this court, or a violation of the order made by this court in this cause on the 28th day of April, 1864, vacating the former order made in this cause on the 12th day of June, 1863, as alleged in said petition. That this company denies that it ever took possession of said rolling stock under or by virtue of the order of June 12th, 1863, entered in this cause, or under or by virtue of any order entered in this cause; and this defendant denies that said rolling stock has been since the 12th day of June, 1863, or is now in the custody of this court, or that the said Hans Crocker has been or is now the receiver thereof; and this company denies that its possession of said rolling stock has been or is now prejudicial or injurious to the rights of said Milwaukee and Minnesota Railroad Company, or that it will be if such possession is hereafter continued. It denies that said eastern division has not had in use upon it all the rolling stock necessary to transact all the
660 business offering on said eastern division since the first day of September, A. D. 1864. The said Milwaukee and St. Paul Railway Company further shows, that the small receipts of said east-

ern division since the first day of September, 1864, has not been owing to any improper management or from the operation thereof, but from the circumstances that since that time the business of the western division of the La Crosse and Milwaukee and Horicon roads, now forming a part of the Milwaukee and St. Paul Railway Company's road, which was formerly done over said eastern division, has since that date been done over the Watertown division of said Milwaukee and St. Paul Railway Company's road; and also from the fact that there was a general failure of crops in the State of Wisconsin in the year 1864, which affected very injuriously business on all roads in the State of Wisconsin.

Milwaukee and St. Paul Railway Company, by
JOHN W. CARY, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Russell Sage, being duly sworn, deposes and says that he is the vice-president of said company; that he has heard the foregoing answer read and knows the contents thereof, and that the same is true of his own knowledge, except the matters stated on information and belief, and as to those matters he believes it to be true.

RUSSELL SAGE.

Sworn to before me July 15, 1865.
JAMES McFARLIN, *U. S. Com'r for Dist. of Wis.*

And the said motion was argued by counsel, and being concluded, the court took the same under advisement.

Obj'n of Mil. and Min. R. R. to $48,000.

And on the same day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed objections to the allowance of forty-eight thousand dollars, returned by the receiver as paid him by the Milwaukee and St. Paul Railway Company since the first day of March, 1865, in the words and figures following, viz:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants, and objects to an allowance to the Milwaukee and St. Paul Railway Company for an alleged payment to Hans Crocker, to be applied to the interest on the Palmer mortgage, which payment was made as is pretended since the 28th Feb'y, 1865, for the reason that the accounts of the receiver and St. Paul Company have not been passed since that time, and that the said St. Paul Company has in its hands over seventy thousand dollars unaccounted for, or is indebted in more than that amount for use of rolling stock belonging to this defendant, since the day and year last aforesaid.

MATT. H. CARPENTER,
Sol'r for Mil. and Min. R. R. Co.

661 *Petition of Soutter and Knapp to become parties, &c.*

And on the same day, to wit, on the 15th day of July, A. D. 1865, came James T. Soutter and Shepherd Knapp, and filed their petition for leave to become parties to this suit, and to be allowed to set up and claim their right to any money in the hands of the receiver, &c., in the words and figures following, viz :

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the judge of the circuit court of the United States for the 9th circuit and district of Wisconsin, in equity:

The petition of James T. Soutter and Shepherd Knapp, both citizens of the city and State of New York, respectfully shows to this court that the La Crosse and Milwaukee Railroad Company, on or about the 30th day of December, 1856, executed and delivered to your petitioners, together with one Greene C. Bronson, since deceased, as trustees, a certain mortgage or deed of trust to secure certain bonds to be issued according to the terms of said mortgage or deed of trust commonly called the land grant mortgage of the La Crosse railroad, a copy of which is hereto annexed and marked Exhibit A, and that all the rights, powers, and duties under said trust deed to Bronson, Soutter and Knapp have survived to and devolved upon your petitioners, Soutter and Knapp; that your petitioners, with said Bronson, filed their bill to foreclose said mortgage or trust deed on the 5th day of December, 1859, in the district court of the United States for the district of Wisconsin, a copy of which said bill of complaint is hereto annexed as Exhibit B ; that such proceedings were had upon said bill of complaint, that a final decree of foreclosure and sale was made therein on the 13th day of January, 1862, a copy of which said decree is hereto annexed marked Exhibit C ; that in pursuance of said decree your petitioners caused said mortgaged premises therein directed to be sold, to be advertised for sale by the marshal of said district of Wisconsin, on the 25th day of April, 1863, on which last-mentioned day the same were sold by the marshal of said district to William Wallace Pratt and William H. White, which said sale was duly confirmed by said district court on the 5th day of May, 1863, a copy of which said advertisement, marked D, said report of sale, marked E, and a copy of said order of confirmation, marked F, are hereto attached ; that the amount due on said decree at the time of said sale was the sum of $4,022,139 81, and that after deducting the amount of the bill at said sale there remained due on said decree the sum of $1,222,139 81, which amount, together with interest thereon, still remains due and unpaid to your petitioners on said decree.

Your petitioners further represent, that, as they are informed
662 and believe, said mortgage or deed of trust mortgaged and conveyed all and singular the locomotives, engines, and other

rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said mortgaged premises in said mortgage described, being all the rolling stock on said road of which Hans Crocker took possession, as receiver, on the 11th day of June, 1860.

Your petitioners further show that said mortgage deed, so given to them, was a lien upon all of said rolling stock prior and superior to the mortgage in this cause, and prior and superior to any lien or claim of the Milwaukee and Minnesota Railroad Company thereon; that it was the intention of your petitioners to foreclose and sell all the property covered by or included in said mortgage or deed of trust, and that your petitioners supposed and believed that said decree did include all of said property above mentioned and described, and that the whole thereof was included in the sale so as aforesaid made by said marshal to said Pratt and White. That since said sale your petitioners have heard and been informed that, in consequence of some oversight or mistake in the proceedings to a decree in the said suit so commenced to foreclose said land grant mortgage, said decree covered and included only forty box cars of the rolling stock and property above mentioned, and that only that amount of said rolling stock was sold by the marshal to said Pratt and White under said land grant foreclosure sale; and that as to all the rest and residue of said rolling stock, said land grant mortgage has not been foreclosed. And that in consequence of the decision made by the Supreme Court of the United States, on or about the 7th day of March last, in the case of the Milwaukee and Minnesota Railroad Company against the Milwaukee and St. Paul Railway Company and others, your petitioners have caused an appeal to be taken from the proceedings and decree in the said land grant foreclosure suit in the said district court to the Supreme Court of the United States, for the purpose of correcting said proceedings and decree, in so far as they fail to include all the rolling stock above mentioned and described, with a view of having the same reformed and corrected, so that your petitioners may have the whole of said rolling stock sold to satisfy the lien of their said mortgage.

Your petitioners further show that Hans Crocker was appointed receiver in the said foreclosure suit of your petitioners on the 18th day of May, 1860, and filed his bond therein, as such receiver, on the 7th day of June, 1860. And afterwards, and on the said 7th day of June, he was also appointed, subject to his former appointment in the case of Sebre Howard against the La Crosse and Milwaukee Railroad Company, and another, receiver of all the property and effects of the La Crosse and Milwaukee Railroad Company. And afterwards, and on the 11th day of June, 1860, by virtue of his two said appointments, took possession of said property, including the rolling stock and property above mentioned; that, as your petitioners are informed and believe, said Crocker still remains receiver in said Howard case
663 and in this suit, but that in the foreclosure suit of your petitioners the said district court, acting under the conviction and belief that the decree in the land grant foreclosure suit covered and included all the rolling stock and property above named, and that

it was all sold by the marshal at the sale under the land grant foreclosure sale on the application of the Milwaukee and St. Paul Railway Company, the assignee of the purchasers at said land grant sale, made an order on the 12th day of June, 1863, directing said receiver to deliver to said Milwaukee and St. Paul Railway Company the property above named under their purchase as aforesaid; and that since said 12th day of June, 1863, the said Milwaukee and St. Paul Railway Company have been in possession thereof under the order aforesaid.

Your petitioners further show, upon information and belief, that it is now claimed that there is a large amount of money in the hands of the said receiver, or in the hands of the said Milwaukee and St. Paul Railway Company, or both, arising from the use and operation of said rolling stock, or that said receiver, or said Milwaukee and St. Paul Railway Company, are liable to account for the use and operation of said rolling stock since the said 12th day of June, 1863, in this suit; but your petitioners claim and insist that if said receiver, or said Milwaukee and St. Paul Railway Company, have any moneys in their hands arising from the operation of said rolling stock, or if they, or either of them, are liable to account for its use in this suit, such liability is subject and inferior to the right, claim, and lien of your petitioners by virtue of their aforesaid mortgage; and that any money in the hands of the receiver, or of said Milwaukee and St. Paul Railway Company, belongs to and should be applied in satisfaction of the balance so as aforesaid remaining due upon said mortgage to your petitioners.

Your petitioners therefore pray that should any money be found either in the hands of said receiver or of the Milwaukee and St. Paul Railway Company, arising from the use or operation of the said rolling stock, that the same may be applied in satisfaction of the balance due on said decree as aforesaid, or that it may be held in the custody and under the control of this honorable court until the determination of said appeal so as aforesaid prosecuted by your petitioners to the Supreme Court of the United States, in order that the same may be so applied, in case it shall be determined by said Supreme Court that your petitioners' lien thereon is the first or prior mortgage thereon.

And your petitioners further pray that they may be made parties to this suit, and allowed to set up and claim their right to any moneys so in the hands of said receiver, or in the hands of said Milwaukee and St. Paul Railway Company, under their mortgage as aforesaid. And your petitioners will ever pray, &c.

JAMES T SOUTTER,
SHEPHERD KNAPP, *Surviving Trustees,*
By JOHN W. CARY, *their Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

On this 15th day of July, A. D. 1865, personally appeared before me John W. Cary, solicitor for the petitioners named in the foregoing petition, and made oath that he has read said petition and

664 knows the contents thereof, and that the same is true to his own knowledge. except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

JAMES McFARLIN.
Commissioner Circuit Court U. S., Dist. of Wis.

Exhibit "A" annexed to the foregoing petition, is the land grant mortgage, a copy of which is given on page 249.

Exhibit "B" is a copy of the foreclosure bill of the western division, or land grant mortgage, a copy of which is given on page 292.

Exhibit "C" is a copy of decree in western division foreclosure case, a copy of which is given on page 322.

Exhibit "D" is copy of the marshal's notice of sale under the decree in western division foreclosure case, a copy of which is given on page 551.

Exhibit "E" is copy marshal's report of sale western division, copy of which is given on page 328.

Exhibit "F" is copy of order of confirmation of marshal's report of sale western division, copy of which is given on page 332.

665 *Argument of exceptions.*

And afterwards, to wit, on the 17th day of July, A. D. 1865, came the parties, by their counsel, and this cause came on to be heard upon the exceptions of complainant to the report of Henry L. Palmer under the order of September 20th, 1864, referring to him the claim of the complainant for his expenses in executing the trust under the mortgage in this cause, and the court being advised in the premises, orders that, first, the first objection be sustained, and that there be allowed to James T. Soutter, trustee, the sum of fifteen hundred dollars for his services. 2d, that the second exception be sustained so far as the services of Prentiss Dow since the first day of June, 1861, is concerned, and that there be allowed to said trustee the sum of nine thousand five hundred and eighty-three dollars and thirty-three cents ($9,583 33) for the services of said Dow from said first day of June, 1861, to the first day of May, 1863. 3d. The third exception of complainant concerning F. A. Palmer's compensation is overruled. 4th. The fourth exception, concerning the allowance of J. S. Brown as counsel in the Supreme Court, is sustained to the extent of $1 000, there being hereby allowed the sum of $4.000 for that service instead of $5,000. 5th. The fifth exception is sustained and the trustee is allowed 3,500 dollars heretofore paid by him to Brown for services, the omission by the auditor being a manifest mistake. 6th. The exception to the allowance for services of J. M. Carlisle is overruled. 7. The exception to the allowance for services of Thomas Ewing is overruled.

And the said cause coming on to be further heard on the exceptions of the Milwaukee and Minnesota Railroad Company to said report, and the court being advised in the premises, orders that the 1st exception, as to the compensation of James S. Brown, be sustained as

to one thousand dollars, and overruled as to the remainder of said account. 2. That the second exception, as to the services of D. E. Wheeler, be sustained as to $2,000, the $3,000 already received by him being deemed sufficient compensation. 3. The third exception, as to Mr. Carlisle's compensation, is overruled. 4. The fourth exception, as to N. J. Emmons's compensation, is sustained. 5. The fifth exception, as to payment made to steamer Keokuk, is sustained.

And it is ordered that there be allowed to the trustee, the complainant in this suit, for the several matters mentioned in said report and for his full compensation for expenses and services to this time, as the result of the above ruling on the report and exceptions thereto, the sum of 35,796.36 dollars, out of any money heretofore received by him, or which may hereafter come to his hands applicable to said trust.

Exception of Mil. and St. Paul Co. to auditor's report.

And on the same day, to wit, on the 17th day of July, 1865, came the Milwaukee and St. Paul Railway Company, by its solicitor, Mr. Cary, and filed its exceptions to the amended report of H. L. Palmer, auditor in this cause, in the words and figures following, viz:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

666 The exceptions of the Milwaukee and St. Paul Railway Company to the report of Henry L. Palmer, auditor, to the 12th special exception filed on behalf of the Milwaukee and Minnesota Railroad Company to the former report of said auditor, filed July 14th, 1865.

First. The Milwaukee and St. Paul Railway Company excepts to so much of said report as charges said company for the use of rolling stock belonging to the eastern division on the Milwaukee and St. Paul railway from September first, 1864, to February 28th, 1865, the sum of $86,466 50; whereas said auditor should have reported that no part of the rolling stock belonging to the eastern division was used on the road of the Milwaukee and St. Paul Railway Company from and after the first day of September, 1864.

Second. The Milwaukee and St. Paul Railway Company excepts to so much of said report as finds, upon a certain hypothesis which is not found to exist, said company should be charged for the use of rolling stock used on its road belonging to the eastern division, from the first day of September, 1864, to the last day of February, 1865, both inclusive, the sum of $90,667 31; whereas said auditor should have found and reported that no part of the rolling stock belonging to said eastern division was used on the road of the Milwaukee and St. Paul Railway Company between the dates specified.

Third. The Milwaukee and St. Paul Railway Company excepts to the report of said auditor, for the reason that it is in the alternative, hypothetical and indefinite.

JOHN W. CARY.
Solicitor for M. and St. R. W. Co.

Exceptions of Mil. and Min. Co.

And on the same day came the Milwaukee and Minnesota Railroad Company, by its solicitor, Mr. Carpenter, and filed its exceptions to the amended report of said auditor, in the words and figures following, viz:

Circuit court of U. S., district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE R. R. Co. and others.

And now comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and excepts to the report of H. L Palmer, esq., auditor, to the twelfth exception of said company to his former report, which last or supplemental report is dated July 13, 1865, and was filed in this cause July 14, 1865, for that the auditor has in and by his report filed in this cause on the 14 day of July, 1865, in answer to the twelfth exception of the Milwaukee and Minnesota Railroad Company to his report filed on the day of , 1865, in this cause, upon his theory of division of the rolling stock purchased by the receiver, assumed an improper and erroneous method of arriving at the proper amount to be charged to the Milwaukee and St. Paul Railway Company for the use of the rolling stock used by them and belonging to the eastern division, which method was unnecessarily hypothetical and erroneous; whereas, having the aggregate amount of mileage earned on the western division exactly determined
667 in the periods of time from the 13th day of June, 1863, to the 1st day of September, 1864, as per evidence before the said auditor, Exhibits K K and Exhibits Y Y Y, he should have charged the said western division $\frac{92}{100}$ of the use or mileage of the whole rolling stock so used on the said division, (that being the precise, or almost the precise, amount of the whole rolling stock belonging to the whole road which the said auditor has reported as belonging to the eastern division,) as per items one (1) and two, (2) Schedule A, amounting to $166,698 99, and credited the same to the said Hans Crocker, receiver; and the said auditor should have credited the said western division for the use of its rolling stock, (as found by the auditor to be 8-100 of the whole rolling stock on the whole road,) the amount earned by it on the said eastern division for the same periods of time, being items eleven (11) and twelve (12) and amounting to $17,733 95; and that in stating the account of the use or mileage of rolling stock as between the two divisions, or between the Milwaukee and St. Paul Railway Company and the said eastern division, between the 1st day

of September, 1864, and the 28th day of February, 1865, the said auditor should have arrived at the result from the actual data presented, and not in the manner he has, viz: having the precise number of the several kinds of rolling stock used in that period of time by the Milwaukee and St. Paul Railway Company, including all the railroads operated by them, including the eastern division, and having the precise number of the several kinds of rolling stock belonging to the whole road from Milwaukee to La Crosse, and which was all used in common after the said 1st day of September, 1864, as it was before (see testimony, page 103) by the Milwaukee and St. Paul Railway Company, the exact proportion is established by which to divide the whole use or mileage of stock earned on the whole roads operated by the said company as per items 3, 4, 5, and 6, Schedule A, the numerator of the fraction being the number of each class belonging to the whole original La Crosse and Milwaukee railroad, and the denominator the total amount of all the rolling stock used on all the roads operated by the Milwaukee and St. Paul Railway Company. The amount once ascertained as earned by the whole of the rolling stock belonging to the main line La Crosse and Milwaukee railroad, the said auditor should then have given 92-100 to the eastern division, and charged the Milwaukee and St. Paul Company with the amount as per items 3, 4, 5, and 6, and should have charged the eastern division with 8-100 of the amount and credited the Milwaukee and St. Paul Railway Company with the same as per item thirteen (13) of credits, Schedule A, and for that the said auditor should have divided the expense of repairs in the same manner, and made credits and charges from the known data as established in the testimony and calculated in Schedule A, items 7, 8, 9, and 10 of debits, and items 14, 15, and 16 of credits.

M. H. CARPENTER,
Sol'r for Mil. and Min. R. R. Co.

668 *Schedule A.*

Mileage of rolling stock and repairs, account with general account. Basis: auditor's division of rolling stock, $607,096 88 to eastern division, $52,199 to western division; being 92-100 of whole to eastern division, and 8-100 of whole to western division.

The Milwaukee and St. Paul Railway Company in account with Hans Crocker, receiver, Dr.

To net earnings of eastern division from June 13, 1863, to Feb. 28, 1865	1,273,113 32
1. Cost of mileage of stock on western division from June 13, 1863, to June 30, 1864, being 92-100 of the whole cost of mileage on that division ($140,762 20) for that period	129,501 23
2. Cost of mileage of stock on western division from June 30, 1864, to Sept. 1, 1864, being 92-100 of whole cost of mileage on that division ($20,432 34) for that period	37,197 76

‡NOTE.—On the first of September, 1864, other stock was added to the common stock by connection of Watertown and Horicon divisions; also stock purchased and built by St. Paul Company since possession was taken, which stock last mentioned, although added from time to time, is considered as entering service Sept. 1, 1864, viz:

3. 31-44 miles by locomotives, $108,644 25, $76,544—92-100	$70,420 48	
4. 18-28 miles by passenger cars, $23,296 65 $14,976,42—92-100	13,778 31	
5. 9-15 miles by baggage cars, $6,905 16, $4,143,09—92-100	3,811 65	
6. 533-971 miles by freight cars, $30,289 38, $16,626 40—92-100	15,296 29	
		103,306 73
7. To cost of repairs of rolling stock from June 13, 1863, to June 30, 1864, $146,736 51—8-100		11,738 92
8. To cost of repairs from June 30, 1864, to September 1, 1864, $37,095 63—8-100		2,967 65
NOTE. Same remarks on first folio, designated thus, (‡), apply to this item and repairs; must be so divided, or approximately.		
9. 31-44 locomotives, $82,360 27. $58,026 55—8-100		4,642 12
10. 35,745 91-60, $491 19, will represent the proportion of repairs of cars, of which 8-100 of the result will be a charge against the western division. (This division of repairs is made upon the basis of the cost of mileage for this period—denominator being cost of mileage Milwaukee and St. Paul Company, and numerator as much as belonged to eastern division, less 8-100.) $35,745—$60,491 of whole $116,214 96, being $68,673—8-100		5,493 84
		1,567,961 57

Cr.

By operation and disbursements accepted as credits, "E" and "E continued"	931,356 62
11. 8-100 of cost of mileage eastern division, June 13, 1863, to June 30, 1864, $182,811 53—8-100	14,624 92
12. 8-100 cost of mileage of eastern division June 30, 1864, to September, 1864, $38,862 91—8-100	3,109 03
13. 8-100 of cost of mileage eastern division Sept. 1, 1864, to Feb. 28, 1865, $53,326 08—8-100	4,266 08
14. Cost of repairs of stock from June 13, 1863, to June 30, 1864, $146,736 51—92-100	134,997 59

669

15. Cost of repairs from June 30, 1864, to Sept. 1, 1864, $37,095 63—92-100	34,127 98
16. Cost of repairs from September 1, 1864, to Feb. 28, 1865; main line proportion being $68,673 and $58,026 55; total $126,699 55—92-100	116,563 59
	1,239,045 81
Balance to credit Hans Crocker, acc't general	328,915 76
	1,567,961 57

Petition of Weld and others for arrears of sinking fund.

And on the same day came Wm. F. Weld and others, and filed their petition for payment of the arrears due the sinking fund under the Palmer mortgage on the eastern division of the La Crosse and Milwaukee railroad, in the words and figures following, viz:

***Petition of** Wm. F. Weld and others, bondholders under mortgage made to F. A. Palmer, trustee, June 13, 1854.*

670 Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the judges of the circuit court of the United States for the 9th circuit, and for the district of Wisconsin, in equity:

Your petitioner, Wm. F. Weld, of the city of Boston, State of Massachusets, shows to this court that he is owner of $100,000 of the bonds hereinafter described as secured by a mortgage to Francis A. Palmer, trustee, of which $84,000 are of the class designated in said mortgage as sinking fund bonds, and for which provision is made in said mortgage for the payment thereof.

Your petitioners, Mason Brothers, show that they are a firm, citizens of and doing business in the city of New York, and composed Charles Mason, Theodore Mason, and——— Mason; that they are the owners or holders of $25,000 of said bonds secured by said mortgage to said Palmer, trustee, of which a portion are designated as sinking fund bonds, as aforesaid.

Your petitioner, Isaac Sherman, shows that he is a citizen of New York, and that he is the owner of $20,000 of said bonds secured by a mortgage to said Palmer, trustee, of which a portion are designated as sinking fund bonds, as aforesaid.

Your petitioner, David M. Hughes, shows that he is a citizen of the city and State of New York, and that he is the owner of $15,000 of said mortgage bonds secured by a mortgage to said Palmer, trustee, of which a portion are sinking fund bonds, described as aforesaid.

Your petitioners, on their own behalf, and on behalf and for the benefit of all other holders of bonds secured by said mortgage to said Pal-

mer, trustee, show to this court, upon information and belief, that the La Crosse and Milwaukee Railroad Company, the defendant in the above-entitled suit, and a corporation incorporated by and located in the State of Wisconsin, on the 13th day of June, A. D. 1854, executed and delivered to Francis A. Palmer, in trust for your petitioners, and for the other holders of the bonds therein described, a mortgage or trust deed, to secure the payment of the indebtedness therein named, represented by bonds payable to the bearer, amounting in the aggregate to the sum $950,000, with interest at 8 per cent. per annum, payable in the city of New York, and of which the principal matures and becomes due on the 1st day of November, 1874; that afterwards, to wit, on the 18th day of February, 1856, for the better security and repayment of said indebtedness, the said railroad company executed and delivered to the said Palmer, in trust as aforesaid, a supplemental deed of trust to the deed of trust first above named, by which supplemental deed of trust the United States Trust Company, of the city of New York, was made and constituted a trustee or re-
671 ceiver, to whom said railroad company covenanted and agreed in said supplementary deed of trust to pay the sum of $12,000 per annum on the 1st day of November in each year, together with the accumulated interest thereon, which money it was covenanted and agreed should be used as and for a sinking fund in the purchase of the bonds named in said supplemental deed of trust whenever they could be purchased at or under par, and the accumulated interest thereon at the date of purchase; that copies of said trust and supplemental trust deeds have been heretofore filed in the above-entitled cause, viz: by the said United States Trust Company, attached as an exhibit to their petition in this cause, filed September 13th, 1864, (page 96 of the printed copy of this case, No. 280, Supreme Court of the United States, December term, 1864, also as an exhibit at page 58 same case,) to which copies of said trust and supplemental deeds your petitioners beg leave to refer with the same effect as if attached hereto and made a part hereof; that said La Crosse and Milwaukee Railroad Company and its successors have only partially kept their agreement to pay the sinking fund provided and promised to be paid in said supplemental deed of trust; that there is due the said United States Trust Company, under the terms of said deed, for the use of said sinking fund, the sum of $73,055, as more fully appears by a detailed statement hereto attached, marked Exhibit "A;" that said railroad company has become insolvent, and, as your petitioners are informed and believe, have no legal organization or board of directors; that all the premises described in said trust deeds are situated in the State of Wisconsin and, together with all the income derived therefrom, are in the hands and custody of a receiver of this court; that the net income from said mortgaged premises is large and much more than sufficient to pay the liens and claims herein described, and which your petitioners humbly petition this court to order the payment of——; that your petitioners have often requested, verbally and in writing, their said trustee, F. A. Palmer, to make an application to this honorable court for the payment of said arrears of money due to said sinking fund; that they by

their attorney, N. A. Cowdry, particularly requested him to make said application at the September term, 1864, of this court, and again to this the April term, 1865, in both cases agreeing to save him harmless from all loss, cost or charges; but that, for reasons unknown to your petitioner, the said Palmer has hitherto and still does neglect his clear duties to his *cestui que trust* in that respect, by reason of which it has become necessary, for the protection of the premises, and of the funds secured to be paid to said United States Trust Company by said trust deeds, for the benefit of your petitioners and other holders of said bonds, issued and secured by said mortgage or trust deeds, that your petitioners, in their own behalf and in behalf of all others, holders or owners of said bonds secured by said deeds, to humbly pray this
672 court to order its said receiver to pay to said United States Trust Company the amount due them under the terms of said trust deeds, as and for a sinking fund, as therein discribed; and that said receiver be ordered, so long as said premises remain in the custody of this court, to pay to said Uuited States Trust Company, for the use of said sinking fund, the sum of $12,000 on the first day of November in each year. And your petitioners, as in duty bound, will ever pray.

April 1st, 1865.

WM F. WILD.
By his attorney, N A. COWDRY.
MASON BROTHERS.
By their attorney, N. A. COWDRY.
ISAAC SHERMAN.
By his attorney, N. A. COWDRY.
DAVID M. HUGHES.

UNITED STATES OF AMERICA, *District of Wisconsin:*

N. A. Cowdry, being duly sworn, deposes and says that he is the duly authorized attorney of each of the above-named petitioners; that he is cognizant with the allegations contained in said petition, and that he believes the same to be true; that his means of information are derivedfrom an inspection of the record in the above-entitled cause, from the declarations of said F. A. Palmer, made to the deponent, and from the verbal and written statement of each of said petitioners, made to this deponent.

N. A. COWDRY.

Subscribed and sworn to before me this 17th day of July, 1865.
JAMES McFARLIN.
Com'r, Cir't C't U. S., Dis't of Wis.

Exhibit "A" referred to in the foregoing petition.

La Crosse & Milwaukee Railroad Company and its successors in account with the United States Trust Company, of New York, Dr.

To instalment of $12,000 each on sinking fund, due Nov. 1st, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864..... $108,000

	Cr.	
1856, Oct. 24, by cash due Nov. 1st.	$12,000	
1857, Dec. 8 & 26 .... " .... "	12,000	
1858, Nov. 1 ..... " .... "	12,000	
1861, Nov. 29 ..... " .... " ..... (1859)	12,000	48,000
		60,000
Add int. on installment of $12,000 from Nov. 1, 1856, to Nov. 29, 1861		1,680
Add int. Nov. 1st, 1860, to May 1st, 1865		3,780
Add int. Nov. 1st, 1861, to May 1st, 1865		2,940
Add int. Nov. 1st, 1862, to May 1st, 1865		2,100
Add int. Nov. 1st, 1863, to May 1st, 1865		1,260
Add int. Nov. 1st, 1864, to May 1st, 1865		420
Total.		72,180
Add int. on $60,000 from May 1st, 1865, to July 15, 1865.		875
		73,055

673 *Order on exceptions.—In equity*

And afterwards, to wit, on the 18th day of July, A. D. 1865, this cause came on to be heard upon the exceptions filed on behalf of the Milwaukee and St. Paul Railway Company, to the report of H. L. Palmer, auditor, made on the references to him by order of the 28th April, 1864, and October 8th, 1864, concerning the accounts of the receiver and the Milwaukee and St. Paul Railway Company, and also on the exceptions of the Milwaukee and Minnesota Railroad Company, and Hans Crocker, receiver, to said report. And the court having heard the argument of John W. Cary, counsel for the Milwaukee and St. Paul Railway Company, and M. H. Carpenter, counsel for the Milwaukee and Minnesota Railroad Company, and James S. Brown, counsel for Hans Crocker, receiver, it is ordered that the first, second and third exceptions of the Milwaukee and St. Paul Railway Company be overruled, and that the fourth and fifth exceptions of said company be sustained. And as to the said fourth and fifth exceptions the court finds that the auditor's report be so modified as to charge the said company with only the proportion of supplies on hand, except wood, which the eastern division bears to the western division in length of road, namely 95 miles to 105 miles. And the exceptions of said company to the supplemental report of said auditor filed 14th July, 1865, are also overruled. The exceptions of Hans Crocker to said auditor's report are overruled. And as to the exceptions of the Milwaukee and Minnesota Railroad Company to said auditor's report in chief, the first, second, third, fourth, fifth, sixth, seventh, ninth and tenth (1, 2, 3, 4, 5, 6, 7, 9 and 10) of said exceptions are overruled; that the sixth exception of the Milwaukee and Minnesota Railroad Company be overruled without prejudice to the right of that

company to proceed against the said Hans Crocker, receiver, for contempt of court, for misfeasance or malfeasance as receiver, and without prejudice to any proceeding against said receiver for damages for misfeasance or malfeasance as receiver, and the eighth (8) of
674 said exceptions is sustained. The 11th of said exceptions having been amended by filing a twelfth exception, which was referred to said auditor, and on which he made a supplementary report, the exceptions of said company to said supplementary report are overruled and the same confirmed as to the charge of 86,466 54 dollars.

It further appearing that the said Milwaukee and St. Paul Railway Company had, since the 28th day of February, 1865, paid to the receiver the sum of 48,000 dollars on account of the matters so audited up to that date, said sum is hereby allowed as a credit on the sum found by the auditor to be in their hands, payable to the receiver. And the court, correcting the auditor's report in the particulars above mentioned, finds that there is now in the hands of the Milwaukee and St. Paul Railway Company, as money due and payable to Hans Crocker as receiver of the eastern division of the La Crosse and Milwaukee railroad, the sum of [364,188 58-100 dollars] three hundred and sixty-four thousand one hundred and eighty-eight and 58-100 dollars.

And it appearing to the court that the cash balance due to said receiver is the sum of $12,681 69, and that there is due to the complainant for the expenses of this suit the sum of $35,796 34, together the sum of $48,478 03, now, upon consideration, this court doth order that the Milwaukee and St. Paul Railway Company, on or before the 1st day of September, 1865, do pay in cash to said receiver the sum of $12,681 69, and in cash to said receiver for said James T. Soutter, trustee, by the same day, the sum of $35,796 34; and that upon making said payment of $48,478,03, the same be credited upon said indebtedness of $364,188 58.

And it is further ordered that the said Milwaukee and St. Paul Railway Company, on or before the first day of September, 1865, pay to Hans Crocker, receiver, the further sum of three hundred and fifteen thousand seven hundred and ten dollars and fifty-three cents; and that in making said last payment, if made by the 1st of September, 1865, said Milwaukee and St. Paul Railway Company may pay to the receiver in past due coupons for interest on the bonds secured by the mortgage in this cause in such amount as the holders of such coupons would be entitled to on their said coupons if the whole amount thereof was paid in cash.

675 *Order on receiver to pay accounts.*

And on the same day came the parties by their counsel, and on motion of Thomas L. Ogden, solicitor for complainant, it is ordered by the court that the receiver pay to the following persons the amount set opposite their respective names, being for services rendered and moneys expended in this suit for the trustees:

James T. Soutter, complainant, services		$1,500
Thomas L. Ogden, solicitor		2,500
James S. Brown, counsel		2,500
James T. Soutter, for J. S. Brown		3,500
J. M. Carlisle		4,000
Thomas Ewing		4,000
		18,000
To James T. Soutter, for expenses paid by		
Dow & Palmer, P. Dow's services	$9,583 33	
" " additional do	450 00	
Dow & Palmer, sundry expenses	1,383 03	
F. Randall	1,000 00	
Thomas Ewing	1,000 00	
J. M. Carlisle	1,000 00	
D. E. Wheeler	3,000 00	
Copy of record	380 00	
		17,796 36
		35,796 36

Order overruling motion for discharge of receiver.

And on the same day this cause came on to be heard upon the petition of the complainant for the discharge of the receiver heretofore appointed in this cause, and for possession of the road and its appurtenances, covered by the mortgage to complainant, and the court being advised in the premises, it is ordered by the court the said motion be and is overruled, and the prayer of the petitioner be and the same is denied.

Motion for receiver to take possession of rolling stock continued.

And on the same day this cause came on to be heard, upon the motion of the Milwaukee and Minnesota Railroad Company for an order on the receiver, directing him to take possession of all the rolling stock of said road which originally came into his possession as receiver, except the forty box cars now the property of the Milwaukee and St. Paul Railway Company, and the same having been argued by Mr. Carpenter for the petitioner, and John W. Cary for the Milwaukee and St. Paul Railway Company, and the court not being sufficiently advised in the premises, the same is continued until the next term of this court.

Order on receiver to deliver possession, &c.

And on the same day came the Milwaukee and Minnesota Railroad Company by Matt. H. Carpenter, its solicitor, and on his mo-
676 tion, and on the mandate of the Supreme Court of the United States in this cause ordered that the whole amount due the complainants in this cause and to become due before the day of sale of the mortgaged premises, are estimated, as now appears to be, as

follows, viz: Amount fixed by order or decree *nisi*, $405,290 05, together with interest thereon since September 27, 1864; coupons due March 1, 1865, $40,000, with interest thereon since that date; coupons to become due September 1, 1865, $40,000, with interest thereon from that date; expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

Ordered, further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid to the day of such payment, and the costs in this cause to be taxed; that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto, when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408; and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all
677 the rights, privileges, and franchises, and personal and other property belonging or in anywise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts.

Ordered, further, that before the Milwaukee and Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay Sebre Howard and Selah Chamberlain, or the owners of said judgments or either of them, all such sums as may come into the hands of said company which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road; and that said company execute its bond to Hans Crocker in the sum of twenty thousand dollars, with sufficient surety, to indemnify him for contingent liability mentioned in the report of the auditor in this cause.

Ordered, further, that said Howard or Chamberlain may, at any time hereafter, apply to the court for an additional bond, if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned to be approved by the clerk of this court.

Ordered, further, that if the said Milwaukee and St. Paul Railway Company shall pay over the sum in its hands, or any part thereof, as this day ordered, the said Milwaukee and Minnesota Railroad Company shall only be required to pay to the clerk of this court

the balance of the amount so due said complainant at the date of payment by said last named company, over such sum so paid by said Milwaukee and St. Paul Railway Company, and said Milwaukee and Minnesota Railroad Company shall be entitled to possession, as hereinbefore mentioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

678 *Order that receiver file ac., and referring same to auditor.*

And on the same day, on motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, ordered that Hans Crocker, receiver in this cause, file, on or before the 15th day of August, an account of all receipts and disbursements by him or his servants from the 28th day of February last to the first day of August next, and that the same be referred to H. L. Palmer, auditor, to hear the parties interested and their exceptions to said account, and to report thereon to this court on the first Monday of September next, and that said auditor also report what sums should be charged and credited for use and repairs of rolling stock, upon the same basis as that adopted in his former report.

Ordered, further, that said receiver pay to said H. L. Palmer, auditor, for his services up to this time, the further sum of two thousand dollars.

Petition for appeal.

And on the same day came the Milwaukee and St. Paul Railway Company, by J. W. Cary, its solicitor, and filed its petition, praying an appeal from the order of the court this day made overruling the exceptions of said company to the auditor's report, and from the order sustaining the eighth exception of the Milwaukee and Minnesota Railroad Company to said auditor's report, in the words and figures following, viz:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the honorable Samuel F. Miller, justice of the supreme court, and honorable Andrew G. Miller, district judge of said court:

Your petitioner, the Milwaukee and St. Paul Railway Company, by John W. Cary, their solicitor, respectfully shows to your honors that it is injured and aggrieved by the report of Henry L. Palmer, esq., auditor in this cause, in charging your petitioner in his said report, and report to the special exception of the Milwaukee and Minnesota Railroad Company, as follows, to wit:

To use of railway stock, belonging to eastern division, from June 13th, 1863, to February 28, 1865 ..... $123,374 40
Use of same railway stock from Sept. 1st, 1864, to February 28th, 1865 ..... 86,466 54

Amounting to the sum of $209,840 94

And by the order and decree of this court overruling of your petitioners exceptions thereto, and by the order and decree of this court sustaining the 8th exception of the Milwaukee and Minnesota Railroad Company to said auditor's report, and by the order and decree of the court this day entered on said report and exceptions, and your petitioner therefore prays an appeal therefrom to the Supreme Court of the United States.

JOHN W. CARY,
Solicitor for the Mil. and St. P. R'y Co.

Whereupon it is ordered by the court that the appeal be, and hereby is, allowed, and that said Milwaukee and St. Paul Railway
679 Company enter into bond, with sureties to be approved by the district judge, on said appeal, and for a supersedeas, in the penalty of two hundred and sixty-five thousand dollars, within ten days from this date, exclusive of Sundays, according to law.

Petition for leave to remove new buildings.

And afterwards, to wit, on the 24th day of July, A. D. 1865, came the Milwaukee and St. Paul Railway Company, by its solicitor, and filed its motion for leave to remove new buildings, &c., in the words and figures following, viz:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., trustee,
vs.
LA CROSSE & MILWAUKEE R. R. CO. & others.

This court having this day sustained the 8th exception of the Milwaukee and Minnesota Railroad Company to the report of Henry L. Palmer, esq., auditor, and disallowed the Milwaukee and St. Paul Railway Company the sum of $27,497 84, expended by it for new buildings, as specified in said exception, thereupon said Milwaukee and St. Paul company, by John W. Cary, its solicitor, comes here in court and moves that said Milwaukee and St. Paul Railway Company have leave to remove said new buildings from the said mortgaged premises. Dated July 18th, 1865.

JOHN W. CARY,
Solicitor for M. and St. Paul R'y Co.

680 *Appeal bond and approval.*

And afterwards, to wit, on the 29th day of July, A. D. 1865, came the Milwaukee and St. Paul Railway Company, by its solicitor, and filed its bond in the penal sum of two hundred and sixty-five thousand dollars, with sureties, duly approved by the honorable Andrew G.

Miller, district judge, which bond, with the approval thereon, is as follows, viz:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., trustee,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMpany *et al.*

Know all men by these presents that we, the Milwaukee and St. Paul Railway Company, as principal, and Alex. Mitchell, Russel Sage, S. Chamberlain, E. B. Wesley, T. S. James, N. A. Cowdery, John W. Cary, Washington Hunt, Walter S. Gurnee, and Horace Galpin, as sureties, are held and firmly bound unto James T. Soutter, survivor, &c., trustee, complainant in the above-entitled action, in the sum of two hundred and sixty-five thousand dollars, to be paid to the said James T. Soutter, surviver, &c., his executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this twentieth day of July, A. D. 1865.

Whereas the above named Milwaukee and St. Paul Railway Company has appealed to the Supreme Court of the United States to reverse the order and decree made in the above-entitled suit by the said circuit court of the United States, on the eighteenth day of July, A. D. 1865: Now, therefore, the condition of this obligation is such that if the above named Milwaukee and St. Paul Railway Company shall prosecute its said appeal to effect, and answer all damages and costs if it shall fail to make good its appeal or plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MILWAUKEE & ST. PAUL CO.,
By ALEX. MITCHELL. *P't.*

Sealed and delivered in the presence of—
DANIEL WELLS, JR.

681 [CORPORATE SEAL.] MILWAUKEE & ST. PAUL R'Y. CO.
By ALONSON CARY, *Sec'y.*
ALEX. MITCHELL, [L. S.]
RUSSEL SAGE, [L. S.]
S. CHAMBERLAIN, [L. S.]
E. B. WESLEY, [L. S.]
F. P. JAMES, [L. S.]
N. A. COWDERY, [L. S.]
JOHN W. CARY, [L. S.]
W. HUNT, [L. S.]
W. S. GURNEE, [L. S.]
H. GALPEN. [L. S.]

Witness for W. Hunt, W. S. Gurnee and Galpen—
D. M. HUGHES.

This bond approved as a supersedeas. A. G. MILLER,
District Judge.

July 29, 1865.

682 *Receiver's rep. for June.*

And afterwards, to wit, on the 29th day of July, A. D. 1865, came the receiver and filed his report for the month of June, and also statement of the operation of the eastern division for the same month, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILW. R. ROAD *et al.*

To the judges of the circuit court of the United States of America, for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milw. railroad, showing my receipts and disbursements for the month of June, 1865. H. CROCKER, *Rec.*

Balance on hand May 31, 1865	$38,930 45
Receipts: Milwaukee and St. Paul Railway Co	38,256 69
	$77,187 14

Disbursements:

Foreign ticket ac	$24 03
Freight earnings refunded	24 25
Legal expenses	159 20
Balance on hand June 30, 1865	76,979 66
	77,187 14

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of June, 1865, according to his best knowledge, information and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of June, A. D. 1865.
W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

683 *Statement of the operation of the Milwaukee and St. Paul railway and its divisions for the month of June,* 1865.

EARNINGS.

From freight	$13,846 18
passengers	6,520 88
mails, rents and miscellaneous	971 72
Total earnings	21,338 78

EXPENSES.

Repairs:	
Of road	$3,722,01
bridges	76
fences	.....
buildings	148 38
locomotives	1,061 67
cars	1,236 04
tools and machinery	94 26
Operating:	
Management and general offices	1,063 78
Foreign agency and advertising	.....
Station service	1,285 06
Stationery	.....
Conductors, baggagemen and brakemen	663 83
Train and station supplies	244 99
Engineers, firemen and wipers	685 00
Oil and waste	314 80
Fuel	1,421 00
Damage to property	.....
Loss and damage of freight and baggage	215 38
Personal injuries	.....
Legal expenses	.....
Car service	.....
Miscellaneous expenses	92 60
Animals killed	.....
Freight earnings refunded	.....
Passenger earnings refunded	.....
Mail earnings refunded	.....
Telegraph	.....
Other expenses:	
Interest and exchange	.....
New York office expenses	.....
Taxes, U. S. rev	519 94
Renewel of track	.....
New buildings	.....
Printing and advertising	84 05
Total expenses	12,853 55

RECAPITULATION.

Gross earnings	$21,338 78
Total expenses	12,853 55
Net earnings	8,485 23

Auditor's Office, Milwaukee, July 21, 1865.

——— ———, *Auditor.*

684 *Receiver's rep. for July.*

And afterwards, to wit, on the 18th day of August, A. D. 1865, came the receiver and filed his report and statement of operation of the eastern division for the month of July, in the words and figures following, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILW. R. ROAD CO. *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of July, 1865. H. CROCKER, *Rec.*

Balance on hand June 30, 1865	$76,979 66
Receipts: Milw. & St. Paul Railway Co	5,000 00
	81,979 66

Disbursements:

Legal expenses, H. L. Palmer	$2,000 00
1st mortgage coupons	34,478 32
Milw. city do	634 03
Balance on hand July 31, 1865	44,867 31
	81,979 66

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of July, 1865, according to his best knowledge, information and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of August, A. D. 1865. W. L. HINSDALE.

Notary Public, Milw. County, Wis.

685 *Statement of the operation of the La Crosse & Milwaukee railroad (eastern division) divisions for the month of July,* 1865.

EARNINGS.

From freight	$17,632 58
passengers	8,859 42
mails, rents and miscellaneous	497 33
Total earnings	26,989 33

EXPENSES.

Repairs :	
Of road	$2,984 26
bridges	14 48
fences	40 00
buildings	53 04
locomotives	1,184 50
cars	1,446 28
tools and machinery	110 08
Operating :	
Management and general offices	853 22
Foreign agency and advertising	.....
Station service	1,413 13
Stationery.	
Conductors, baggagemen and brakemen	581 50
Train and station supplies	98 22
Engineers, firemen and wipers	445 00
Oil and waste	298 86
Fuel	1,013 00
Damage to property	.....
Loss and damage of freight and baggage	107 77
Personal injuries	.....
Legal expenses	.....
Car service	.....
Miscellaneous expenses	.....
Animals killed	16 00
Freight earnings refunded	.....
Passenger earnings refunded	.....
Mail earnings refunded	.....
Telegraph	10 00
Other expenses :	
Interest and exchange	.....
New York office expenses	.....
U. S. rev. tax	672 04
Renewal of tract	.....
New buildings	.....
Printing and advertising	71 34
Total expenses	11,412 72

RECAPITULATION.

Gross earnings	$26,989 33
Total expenses	11,412 72
Net earnings	15,576 61

Auditor's office, Milwaukee, August 15, 1865.

——— ———, *Auditor.*

686 *Statement of the earnings and expenditures of the eastern division L. C. & M. R'd—February* 28, *to July* 31, 1865.

EARNINGS.

From freight	$55,831 94
passengers	43,125 20
mails and rents	4,207 34
	103,164 48

EXPENDITURES.

Repairs of road	$23,064 36
Do. bridges	123 69
Do. fences	131 00
Do. buildings	916 82
Do. locomotives	3,565 97
Do. cars	6,674 98
Do. tools and machinery	573 71
Management and gen'l office	3,475 67
Station service	8,286 31
Conductors, baggage, and brakeman	4,145 16
Engineers, firemen, and wipers	4,396 60
Train and station supplies	1,240 75
Oil and waste	1,848 38
Fuel	7,170 00
Lost and damaged freight	413 06
Car service	41 04
Miscellaneous expenses	371 46
Animals killed	16 00
Telegraph	41 19
Printing and advertising	510 41
U. S. revenue tax	2,521 88
Rents	12 50
	71,540 94

687 *Statement of earnings and expenditures of the La Crosse and Milwaukee railroad from* 28*th February to* 31*st July*, 1865.

Gross earnings	$103,164 48
Operating expenses	71,540 94

Statement of receipts and disbursements of the receiver for same period.

Received from the Milw. and St. Paul Railway Co	$53,701 69

Mr Justice Clifford

Supreme Court of the United States.

DECEMBER TERM, 1867.

Milwaukee and St. Paul Railroad Company,
vs.
James T. Soutter,
AND THE
Milwaukee and Minnesota Company.
} Nos. 43 and 62.

Same Parties.—No. 161.

James T. Soutter and Shepherd Knapp,
vs.
Milwaukee and Minnesota Railroad.
} No. 218.

Milwaukee and Minnesota Railroad,
vs.
Milwaukee and St. Paul Railroad.
} No. 219.

BRIEF FOR PLAINTIFF.

SUPPLEMENT.

C. CUSHING.

WASHINGTON;
GIBSON BROTHERS, PRINTERS.
1868.

Supreme Court of the United States.

DECEMBER TERM, 1867.

Milwaukee and St. Paul Railroad Company,
vs.
James T. Soutter,
AND THE
Milwaukeee and Minnesota Company.
} Nos. 43 and 62.

Same Parties.—No. 161.

James T. Soutter and Shepherd Knapp,
vs.
Milwaukee and Minnesota Railroad.
} No. 218.

Milwaukee and Minnesota Railroad,
vs.
Milwaukee and St. Paul Railroad.
} No. 219.

BRIEF FOR PLAINTIFF.

SUPPLEMENT.

C. CUSHING.

WASHINGTON;
GIBSON BROTHERS, PRINTERS.
1868.

Supreme Court of the United States.

No. 182. } December Term, 1866.
No. 212. }

No. 43. } December Term, 1867.
No. 62. }

THE MILWAUKEE AND ST. PAUL RAILROAD COMPANY,
Appellants,
vs.
JAMES T. SOUTTER, Survivor Trustee,
AND THE MILWAUKEE AND MINNESOTA RAILROAD CO.

BRIEF FOR THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, Appellees.

This suit was commenced in the District Court for Wisconsin, December 9, 1859, by Greene C. Bronson and James T. Soutter, Trustees, to foreclose the second mortgage of the La Crosse and Milwaukee Railroad Company, on its Eastern Division.

Various appeals have been taken heretofore in this cause from time to time, upon which consecutive portions of the record have been brought up; and, therefore, the Clerk, in making his return on this appeal, sent up only such portions of the record as are subsequent to his previous returns.

Portions of the record previously returned are

No. 123, Dec. Term, 1863.
No. 267, Dec. Term, 1863.
No. 280, Dec. Term, 1864.

No 123 was an appeal by the complainants from the final decree, by which the bonds were sealed. That appeal was

heard December, 1863. (Reported, 2 Wallace, 283.) The Court reversed the decree and issued a mandate as follows: (*Record No.* 280, *p.* 9.)

It is therefore now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be and the same is hereby reversed with costs, and that the said complainants, Greene C. Bronson and James T. Soutter, Trustees, &c., recover against the said respondents, the La Crosse and Milwaukee Railroad Company, *et. al.*, two hundred and sixty-one dollars and seventy-one cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the Circuit Court of the United States for the District of Wisconsin, with directions to enter a decree for all the interest due and secured with the mortgage with costs.

That the Court ascertain the amount of moneys in the hands of the receiver *or receivers* from the earnings of the road covered by the mortgage, which may be applicable to the discharge of the interest, and apply it to the same, and that if the moneys thus applied is not sufficient to discharge the interest due on the first day of March, 1864, then, to ascertain the balance remaining due at that date, and in case such balance is not paid within one year from the date of the order of the Court ascertaining it, then an order shall be entered directing a sale of the mortgaged premises under the direction of the Court, and on bringing the proceeds into Court, they shall be applied to the payment of the balance of interest, and if they exceed such balance, shall be applied to the future accruing interest, down to the sale, and if they exceed that, to the principal of the bonds, in case the bondholders assent, or *pro rata* to those who may assent, and any remaining balance of the proceeds to be invested under the direction of the Court, for the payment of future accruing interest, and ultimately the principal. And further, that in case the interest upon the bonds is paid without a sale, the decree shall remain as securing for subsequent accruing interest, and ultimately for the principal. And further, that the Court may pay out of the moneys in the hands of the receiver, or out of the proceeds, the taxed costs of the trustees in the proceedings for the foreclosure of the mortgage, not taxed and received from the defendants in these proceedings. And also, such council fees in behalf o the trustees as the Court, in its discretion, may seem righ to allow.

No. 267 was an appeal by the Milwaukee and Minnesota Railroad Company from orders refusing the motion to discharge the receiver, and was dismissed as premature.

No. 280 was an appeal by the Minnesota Company.

1. From the decree entered on the mandate issued in No. 123.

On this branch of the appeal, this Court affirmed the decree.

2. From the order of Circuit Court denying the application to discharge the receiver, and to place the Minnesota Company in possession of road and appurtenances on payment of amount due.

The Supreme Court reversed this order, and directed an order to be entered granting the application made below.

These two appeals are reported, 2 Wallace, 511.

The mandate (*Trans. No.* 182, *p.* 15) is as follows:

"In consideration thereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said Circuit Court, in this cause, ascertaining the amount due to complainants, and fixing a time for the payment thereof, and for a sale on failure of payment, be and the same is hereby affirmed.

"And it is further ordered, adjudged, and decreed, that the order of the Court dismissing the application for the discharge of the receiver, and possession of the road and appurtenances be and the same is hereby reversed with costs; and that the said defendant, the Milwaukee and Minnesota Railroad Company recover against the said complainants $434.78 for its costs herein expended, and have execution therefor.

"And it is further ordered that this cause be, and the same is hereby remanded to the said Circuit Court, with instruction to ascertain the amount due to complainants within some reasonable time to be fixed by said Court, *and to make an order that, on the payment of that sum, with the costs of complainants*, into Court within said time, the receiver shall be discharged, and the railroad from Milwaukee to Portage City, *with all the appurtenances, rolling stock, and other property, real and personal*, belonging to said division of road, be delivered by said receiver to the Milwaukee and Minnesota Railroad Company, but that no such discharge of the receiver or delivery of the road and its appurtenances shall be made until said Company shall first enter into bond with sufficient surety to pay to Sebre Howard and Selah Chamberlain, all such sums as may come into the hands of said Company,

which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as liens on said road."

APPEAL IN No. 182.

This appeal (*Trans. No.* 182, *p.* 554) is by the Milwaukee and St. Paul Railroad Company.

1. From the report of auditor charging that Company with the use of rolling stock belonging to the Eastern Division, from June 13, 1863, to February 28, 1865, (No. 182, p. 78,).....$123,374.40

The use of same from September 1, 1864, to February 28, 1865, (No. 182, p. 536,)..... 86,466.54

$209,840.96

2. From the order and decree of the Circuit Court of the District of Wisconsin overruling the exceptions of the St. Paul Company to the auditor's report. (*Trans. No.* 182, *p.* 550.)

3. From the order and decree sustaining the 8th exception of the Minnesota Railroad Company to said report. (*Trans. No.* 182, *p.* 551.)

4. From the order and decree entered on the report and exceptions. (*Trans. No.* 182, *p.* 550.)

At the same time that the bill on this Eastern Division mortgage was filed, a bill to foreclose the land grant mortgage on the Western Division was filed by Bronson, Soutter and Knapp, Trustees. (*Trans. No.* 182, p. 234.) By stipulation (*Trans. No.* 182, p. 363) the whole record in the land grant cause was in evidence before the auditor. It is *Trans. No.* 159, *December Term*, 1866.

These two foreclosure suits proceeded *parti passu* with corresponding proceedings in each suit up to the final decree in this suit first appealed from; on the same day the final decree on the Western Division suit was entered.

In each of these suits references to the same masters were ordered to ascertain what portion of the rolling stock was appurtenant to each division of the road; and in each of

these suits it was determined by the report of the masters, and confirmation thereof, that of the whole rolling stock on the road at the time of the appointment of the Receiver in these suits only forty box cars were appurtenant to the Western Division and subject to the land grant mortgage; and that all the rest were appurtenant to the Eastern Division.

The decree in the land grant mortgage case covered only forty box cars of the rolling stock. (*Trans.* 182, p. 252.)

Under the decree of the land grant mortgage foreclosure on the Western Division, only forty box cars of the rolling stock above mentioned were sold to Pratt and White, who transferred their purchase to the St. Paul Company.

See petition of Soutter & Knapp, sworn to by Mr. Carey, stating this, (*Trans. No.* 182, p. 540;) Marshal's report of sale and order of confirmation, (*Trans. No.* 182, pp. 256, 259.)

The Milwaukee and St. Paul Company was organized May 5, 1863. *See Trans. No.* 182, p. 423, for answer of St. Paul Company to the supplemental bill in Western Division cause, which also states the foreclosure and sale under the land grant mortgage.

The order of reference to make this inquiry as to rolling stock in the Western Division suit, the masters' report thereon, with the exceptions and the order of the court confirming such report, by which it appears that only forty box cars are appurtenant to the Western Division, are to be found at pp. 244, 245, 251, *Trans. No.* 182.

Exactly corresponding orders and proceedings in the Eastern Division case making the same distinction of the rolling stock are to be found in previous returns of the record in this cause. (*Trans. No.* 132, *December Term*, 1863, pp. 297, 301, 585.)

Shortly after the commencement of the two foreclosure suits Hans Croker was appointed receiver in both suits. See order in land grant suit, *Trans.* p. 242; see order in Eastern Division suit, *Trans.* 132, p. 57.

For his own account of all orders appointing him, and

what was done from time to time with the rolling stock, see *Trans. No.* 182, p. 19.

The sale under the land grant foreclosure took place April 25, 1863, (*Trans. No.* 182, p. 257,) and was confirmed May 5, 1863, (*Trans. No.* 182, p. 259.) On the 7th of May, 1863, the St. Paul Company presented a petition to the District Court in both suits, praying possession of the entire line, both Eastern and Western Divisions, and all the appurtenances thereto, (*Trans. No.* 182, p. 259,) offering, if this was done, to account to the "Receiver of the net tolls and income of said Eastern Division, under the direction and supervision of this honorable Court, and to submit such rules and regulations in respect thereto as this honorable Court shall make and establish."

Upon the presentation of this petition the following three orders were made by the *District Court:*

On the 7th of May, 1863, in the Western Division suit the following order, (*Trans. No.* 182, p. 261:)

"Whereupon it is ordered by the Court (Mr. Carpenter, in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan, in behalf of William Crawshay and Orville Oddie, objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, *and the rolling stock and property specially described in the decree.*

"And it is further ordered by the Court, that a full and perfect inventory be taken by the receiver of all rolling stock *other than the forty box cars specially mentioned in the decree*, and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, *including such as have been procured by the receiver and now on hand*, and that he make report of the same on the eighth day of June next.

"And as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the Court (reserving the right to rescind, change or modify this order at any time hereafter) that the said Milwaukee and St. Paul Railway Company and the receiver who continnes to be the receiver of the Eastern end or division of said La Crosse and Milwaukee Railroad,

between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company, and the said receiver, jointly employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said Company, and said Company make, keep, and duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue, and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds in prior mortgages as heretofore."

II.

On the 12th of June, 1863, the following order in the Western Division case, (*Trans. No.* 182, p. 262:)

"On consideration of said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the Court that there be delivered over to said Milwaukee and St. Paul Railway Company, all and singular, the railroad between the city of La Crosse and Portage city, its road-bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

"And also the share and proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree.

"And also, *subject to other or previous liens or claims*, the possession of the rolling stock on hand when the receiver took the same under order of the Court.

"And it is further ordered by the Court, that the said receiver be and hereby is discharged as such from the management and control of the said Western Division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, *and subject to the orders* made or to be made in this case, and in the other cases in which he was appointed or may hereafter be appointed."

III.

On the 12th of June, 1863, the following order in the Eastern Division case (*Trans. No.* 182, p. 358):

UNITED STATES DISTRICT COURT.

GREENE C. BRONSON, AND JAMES T. SOUTTER,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others.

June 12th, 1863.—A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the Court and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Company, and others, setting forth in substance, that in pursuance of a decree of this Court in that case, the Western Division of the La Crosse and Milwaukee Railroad, between La Crosse and Portage City has been sold, and that said sale was confirmed and perfected. And that said Milwaukee and St. Paul Railway Company, is a corporation organized under the laws of the State, as granted under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company. And the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Company, who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Company, in opposition thereto. *And the Court being satisfied that the policy of the State and the interests of the public, and of the creditors of the La Crosse and Milwaukee Railroad Company require that the Court should not continue further to operate by its receiver, and part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation. And the Court being satisfied that its possession and control by a receiver of the Eastern Division, between Portage City and Milwaukee, might effect the rights of the public,* and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company. And it being represented to the Court, that persons interested in the Milwaukee and St. Paul Railroad Company, own or control

bonds included in the mortgage to these complainants, and the subject of this suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage.

It is thereupon ordered by the Court that the order appointing a receiver in the case be modified in the manner following, *subject to any further or other order rescinding altering or modifying this order now here made:* That the receiver let the said Milwaukee and St. Paul Railroad Company into the possession of the Eastern Division of the La Crosse and Milwaukee Railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. *And that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the said Court,* operate said Eastern Division of said railroad in connection with the said Western Division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the Court that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its Board of Directors, in relation to the business and operation of the whole line of road, and that the said Railway Company shall, out of the revenues of said road, keep the said Eastern Division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the portion of the Eastern Division of the net revenues of the said railroad. And that the receiver make monthly returns as heretofore of his accounts into Court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities.

And it is further ordered by the Court, that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said Company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the Court, in the penalty of one hundred thousand dollars, conditioned that the said Company will faithfully comply with this order of Court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns and pay over the net revenues of said road, according to this order.

A similar order was made at the same time in the Howard suit, in which Crocker had also been appointed receiver.

Judge A. G. Miller, in his opinion delivered September, 1863, (*Trans. No.* 182, p. 443,) states the purpose and effect of these orders made by him, as follows:

"*The only legitimate question* before the Court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated during the pendency of the appeal, as an entire road, *under the grant of charter to the best interests of the parties, the creditors and the public?*

"It was conceded that the use of the road could not be obstructed at Portage City; but that the cars must be run through the whole length of the road. Upon the best consideration I could give the subject, the order was made modifiying the order appointing the receiver, and allowing the Milwaukee and St. Paul Company, the owners of the Western Division, to operate the Eastern Division under the supervision of the receiver, and subject to the full and complete control of the Court, even to a removal if the Company fails faithfully to comply with the order and with ample security for the revenues of the road.

"This order was intended to prevent a diversion of the travel and business on the Western Division from the Eastern, and to save the expense of two sets of employees and to prevent interruption of the public.

"The requirement is, that the St. Paul Company, being the owners of the Western Division, must use the whole road

without diversion of business or obstruction to the prejudice of the Eastern Division. *The Eastern Division is not operated by the St. Paul Company upon any principle of right; but merely subject to the control of the Court for the time being.*"

The same Judge, in an opinion delivered at April Term, 1864, of the Circuit Court, says, (*Trans. No.* 182, p. 448):

"The first duty of the Court is to secure the interests of the public, under the grant of the charter of the La Crosse Company. The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes.

"For this purpose the orders of the 12th June, 1863, in this case and *in the Howard case* modifying the original orders appointing the receiver were made. The Milwaukee and St. Paul Company were allowed by those last orders to operate temporarily the Eastern Division of the road in connection with the Western Division, of which they were owners, for the sake of economy in operating the road *to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul Company from diverting trade and travel from the Eastern Division.* It was known that the St. Paul Company were about to connect their division from Portage City with the Watertown road, and thence to Milwaukee, *which might effect the Eastern Division.*

"The order allowing that Company to operate the Eastern Division, subject to the control of the Court, and the supervision of the receiver, and under heavy bonds with adequate security, *prohibited them from putting a car on their extension from Portage or any other road east of that point.* I considered it a proper duty to the public and the parties *to secure the use of a continuous route, according to the charter, without interruption or deviation of trade or travel* between the *termini* of the road.

"There is a disposition not to discriminate between these orders for the temporary and conditional operation of the road by the St. Paul Company, and an order for the absolute and adverse possession of the Minnesota Company.

"The order of the 12th of June in the Howard case was made in the Circuit Court where the bill was pending, and in this case in the District Court.

"The order of the District Court in this case was made under the universal belief that, according to the opinion of the Supreme Court, the record remained in the District Court for its proceedings as a final decree, under the act of March 3, 1863. The Supreme Court having since announced that

the record should have been transferred to the Circuit Court, under the act of July 15, 1862, the order of the District Court is to be considered of no validity, and it is my duty to order it rescinded. For the reasons here given, *the orders of the 12th of June*, 1863, will be rescinded, and the Eastern Division and appurtenances restored to the receiver under his original appointment."

On the faith of the offers of the St. Paul Company in their petition, and by these orders, that the Company was virtually appointed receiver of the Eastern Division and the rolling stock appurtenant to it, obtained, and went into possession thereof, and has continued in the possession of the rolling stock ever since; has diverted it from the La Crosse Railroad, and retains it still in violation of orders and decrees of District, Circuit, and Supreme Courts, (*Trans. No.* 182, pp. 122, 124, 125, 155,) and claims now to be the owner thereof. (*Trans. No.* 182, *p.* 424.)

This Court has decided (in 1 Wallace, 406,) that these orders in the Eastern and Western Division foreclosure cases are void for want of jurisdiction in District Court, and the District Court has itself ordered (*Trans.* 182, *p.* 491) in the Eastern Division cause, as follows:

"April 28, 1864. This day ordered by the Court that the order of the 12th June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the Eastern Division of the road, be, and the same is hereby rescinded, and that the Milwaukee and St. Paul Railway Company return to the receiver the said road and appurtenances and rolling stock received under said order, and all property relating to said Eastern Division."

A similar order was made in the Sebre Howard suit. *See p. 26 of Mr. Cary's brief.*

As condition of obtaining possession the St. Paul Company, on the making of the order of June 12, 1863, executed the following bond, (*Trans. No.* 267, *p.* 18):

"Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdray, Horace Galpin, William H. White, George W. Rogers, Selah Chamberlain, and Asahel Finch, as sure-

ties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid by the said obligee, its assigns, or any party interested herein, to which payment well and truly to be made to the said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly, by these presents.

"Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

"The condition of this obligation is such that, whereas, the District Court of the United States for the District of Wisconsin, in a certain case therein pending, wherein Green C. Bronson, James T. Soutter, and Shepherd Knapp, are complainants, and the La Crosse and Milwaukee Railroad Company, and others, are defendants, made a certain order, bearing date on the twelfth day of June, A. D., 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the Eastern Division of the La Crosse and Milwaukee Railroad, between Pontage City and Milwaukee, with its appurtenances, property, *and rolling stock belonging thereto*, and directing said Milwaukee and St. Paul Railroad Company, subject to the further order or orders of said District Court, to operate said Eastern Division of said railroad in connection with the Western Division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or discussion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its Board of Directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the Eastern Division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of

every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of revenues arising on the whole road, and of all necessary disbursements out of the same, and *pay over monthly to the receiver* the proportion of said Eastern Division of net revenues of the said road.

"Now, therefore, *if the said Milwaukee and St. Paul Railway Company shall faithfully comply with said order of said Court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public* and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues to the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue."

The decree of foreclosure and sale in the Eastern Division case, made September 28, 1865, in Circuit Court, (*Trans. No.* 212, pp. 36, 38,) contains the following provisions:

"A description of the property authorized to be sold under and by virtue of this is as follows, viz:

"All and singular the railroad of said company, commencing at the city of Milwaukee and running thence to Portage City, * * * * * and also all and singular the locomotives, engines, cars, and rolling stock, and all the materials, tools, implements, and utensils, and other personal property which had been procured for and used in connection with said roads, or either of them, prior to the appointment of Hans Croker as receiver of said road, except forty box cars, numbered respectively 330, &c., and including as part of said mortgaged premises such proportion of the rolling stock, bought by the receiver since his appointment, as the net earnings of the Eastern Division of said railroad bear to the earnings of the Western Division, as ascertained by the report of H. L. Palmer, and as confirmed by the court.

* * * * * * * * * *

"It is further ordered and decreed that this decree shall not prejudice the rights of the Milwaukee and Minnesota Railroad Company under the order of the Court in this cause, made on the 10th day of July, A. D. 1865, providing for the entry of said Company into possession of the said mortgaged premises on certain terms and conditions fixed by said order,

and the said Milwankee and Minnesota Railroad Company shall be at liberty to avail itself of the provisions of the said order, notwithstanding this decree, at any time before the sale of said mortgaged premises in this cause."

H. L. Palmer had, on April 28, 1864, been appointed an auditor (*Trans. No.* 280, *p.* 67) to report on receiver's account, and the receipts and disbursements of the St. Paul Company since June 12, 1863.

8th of October, 1864, an order was made in this suit, (*Trans.* 182, *p.* 1,) requiring "the auditor to ascertain and report what should be charged for the use of rolling stock formerly used on said railroad as part of the accounts reported by him." All parties interested, including the St. Paul Company, appeared before the auditor and litigated the matter referred to him. The complainants and the St. Paul Company appearing by Mr. John W. Cary as their counsel. (*Trans. No.* 182, *pp.* 69, 82, 83.)

The auditor made his report upon all the matters referred to him 28th of June, 1865. (*Trans. No.* 182, *p.* 69.) By this report he found there was due to the Eastern Division case from the St. Paul Company $327,118.52.

Schedule B annexed to this report shows the items making up this balance, and includes the item objected to by appellants for use of railway stock belonging to Eastern Division from June 13, 1863, to February 28, 1865. (*Trans. No.* 182, *p.* 81.)

The amount actually claimed by the Minnesota Company before the auditor, as appears from their statement, p. 314, (*Trans. No.* 182,) was $1,078,372.38.

It will appear by the stipulations, (*Trans. No.* 182, *pp.* 363, 399, 491,) that besides the evidence reported by him the auditor had before him the record in the land grant foreclosure case, (*No.* 159, *December Term*, 1866,) the orders appointing the receiver and all orders affecting the receiver in any way whatever; the whole record in this case, and the various opinions of the District Court.

To this report of the auditor the St. Paul Company interposed five exceptions. (*Trans. No.* 182, *p.* 505.) The Min-

nesota Company interposed eleven exceptions, (*Trans. No.* 182, *p.* 497,) and afterward an additional twelfth exception, (*Trans. No.* 182, *p.* 509,) calling attention to an oversight of the auditor in auditing the charge for use of rolling stock from September 1, 1864, to February 28, 1865.

Thereupon the Court referred this twelfth and additional exception back to the auditor to see if it was well founded, and if so to report how much additional should be allowed for what had been omitted. *Page* 511.

The auditor made a supplemental report on this additional exception, allowing $86,466.54 for the use of rolling stock in addition to what was before reported, *page* 533; to which the St. Paul Company put in three exceptions. *Page* 543.

The auditor's report and all the exceptions thereto having been brought to a hearing on the 18th of July, 1865, the Court (*Trans. No.* 182, *p.* 550) sustained the fourth and fifth exceptions of St. Paul Company to the report, and modified the report accordingly. It overruled the first, second, and third exceptions of St. Paul Company to the report, and all their exceptions to the supplemental report. As to the exceptions of the Minnesota Railroad Company, the Court overruled the first, second, third, fourth, fifth, sixth seventh, ninth, and tenth. It overruled the sixth exception "without prejudice to the right of that Company to proceed against Hans Crocker, receiver, for contempt of Court, for misfeasance or malfeasance as receiver, and without prejudice to any proceedings against said receiver for damages, for misfeasance or malfeasance as receiver." (*Trans. No.* 182, *p.* 551.)

It sustained the eighth exception of the Minnesota Company to the original report. *Page* 551.

It also overruled exceptions of Minnesota Company to the supplementary report, and confirmed the report as to the charge of $86,466.54; and found the balance due from St. Paul Company to the receiver to be $364,188.58. *Page* 550.

The principle upon which the auditor acted in charging for the use of the rolling stock is clearly and distinctly stated in supplementary report. (*Trans. No.* 182, *p.* 535.)

The testimony of Goodrich, on which the auditor made his computation, "*p.* 104, printed testimony," will be found, (*Trans. No.* 182, *p.* 85.)

This principle is one that is well known as in universal use among railroads in this country, and is that of charging so much per mile for the actual use of rolling stock. The fair rate of mileage was proved by Mr. Goodrich, at *page* 85, and the actual amount of miles traveled was proved before the auditor.

There were no contradictions on the subject, so that this appeal does not present any question as to the rate of allowance or the number of miles traveled.

The following are the exceptions which the appellant's object were disallowed:

The first exception of the St. Paul Company: Excepts to so much of the report as disallows its claim for the use of the rolling stock, as charged and contained in Exhibits E and E continued, attached to said report, to wit: First item No. 39 of Exhibit E for the sum of $166,192.30; second item No.— of Exhibit E continued for the sum of $36,118.86; so much of item 38 of Exhibit E as was disallowed by said auditor, amounting to the sum of $17,179.69; all of which said amount should have been allowed and credited as contained in said Exhibits E and E continued.

The second exception of the St. Paul Company: Excepts to so much of the report as finds that only forty box cars and such proportion of the rolling stock as was purchased and put on the road by the receiver as the net earnings of the Western Division from the 11th of June, 1860, to the 13th day of January, 1862, bear to net earnings of the Eastern Division for the same period of time is owned by the Milwaukee and St. Paul Company, and that all the remaining stock on the road on the 13th day of June, 1863, belonged to and was owned by the owners of the Eastern Division of said road.

The third exception of the St. Paul Company: Excepts to so much of the report as charges it for the use of the share of the rolling stock belonging to the Eastern Division on the Western Division, and on its other roads from the 13th day of June, 1863, to the 28th day of February, 1865, the sum of $123,374.40; whereas the auditor should have found and reported that no part of said rolling stock, which was on said road on the 11th day of June, 1860, when the receiver took

possession, was in the possession or under the control of said receiver or of the Milwaukee and St. Paul Company as receiver, or in the custody or control of the Court after the 12th day of June, 1863; but that the same was in the possession and control of the St. Paul Company as owner.
(*Trans. p.* 505.)

To the supplemental report of the auditor, the St. Paul Company took the following exceptions, all of which were disallowed: (*Trans. p.* 543.)

First, The Milwaukee and St. Paul Company excepts to so much of said report as charges said company for the use of rolling stock belonging to the Eastern Division on the Milwaukee and St. Paul Railway from September 1, 1864, to February 28, 1865, the sum of $86,466.50: whereas said auditor should have reported that no part of the rolling stock belonging to the Eastern Division was used on the road of the Milwaukee and St. Paul Railway Company from and after the 1st day of September, 1864.

Second, The Milwaukee and St. Paul Company excepts to so much of said report as finds, upon a certain hypothesis which is not found to exist, said company should be charged for the use of rolling stock used on "its road belonging to the Eastern Division from the 1st day of September, 1864, to the last day of February, 1865, both inclusive, the sum of $90,668.31;" whereas, said auditor should have found and reported that no part of the rolling stock belonged to said Eastern Division was used on the road of the Milwaukee and St. Paul Railway Company between the dates specified.

Third, The Milwaukee and St. Paul Railway Company excepts to the report of said auditor for the reason that it is in the alternative hypothetical and indefinite.

A. The second and third exceptions to the supplemental report may be disposed of at once by the observation that the part of the report characterized in their exceptions as "in the alternative hypothetical and indefinite," were not acted on or confirmed, and no charge was made against the St. Paul Company as to that part of the report, but the previous part of the supplemental report which was not hypothetical, indefinite or in the alternative, and which charged the St. Paul Company for the use of rolling stock from September 1, 1864, to February 28, 1865, with the sum of $86,466.54, is

the only part of the said supplemental report which was confirmed.

(*Trans. pp.* 536, 551.)

B. Exhibit E and Exhibit E continued, to which the first exception refers, is a statement made up from the books of St. Paul Company, and claimed by that company to be correct, (*Trans. pp.* 76, 117,) and this exception assumes that it is a correct statement and claim. Of course this statement and claim is upon the theory that the St. Paul Company owned all the rolling stock on the road when the receiver took possession, instead of only forty box cars thereof, and the disallowed items rest on this basis. The auditor rejected and corrected all of these items on the theory that the St. Paul Company owned only forty box cars of all the rolling stock on the road when the receiver took possession, (*Trans. pp.* 76, 77, 78,) and its proportionate part of the rolling stock purchased by the receiver.

If the auditor was right in this theory the first exception was properly overruled.

The second and third exceptions of the St. Paul Company to the report, and the first exception to the supplemental report of the auditor, present exactly the same question, and no other.

Does the St. Paul Company own any other rolling stock than forty box cars and its proportionate share of the rolling stock purched by the receiver, as fixed by the orders of the court in both foreclosures, and did not all the rest belong to the Eastern Division? If the St. Paul Company owned no more, and the rest belonged to the Eastern Division, then all the exceptions were properly overruled.

Now, all this was *res adjudicata* in this suit; it had been solemnly settled by the references in each suit, the report on these references, the confirmation thereof, the decree of sale in the Land Grant foreclosure, the sale on that decree, the decrees and opinions of the circuit and district judges in both foreclosure suits, and finally and most solemly in the

Supreme Court, in 2 Wallace, 641, where the court concludes its opinion as follows :

"We have thus examined, with care and patience, *the mortgage*, and the various orders and decrees of the District Court, on which the claim of the Milwaukee and St. Paul Railway Company to the ownership of this property depends. There is in all of them some want of clearness and precision, including the mortgage itself. *Before the court ordered the sale it should have made clear all these ambiguities.* It evidently attempted to do so, and *we think if it has not in all cases effected that purpose fully, it has furnished the criteria by which it can be done.* And although the language of its orders is not always free from doubt, we have been able to satisfy ourselves of the court's intentions.

"*The title of appellant is clear on the record*, unless it has been divested by these proceedings. *We think that they do not confer title to the rolling stock on the Milwaukee and St. Paul Railway Company, nor divest the appellant*, except as to the forty box cars, and the proportion of the stock purchased by the receiver, which the net earnings of the Western Division bore to the net earnings of the Eastern Division, *and that* THEY *also decide that the mortgage under which they claim did not include any more.*"

And under this head the court is respectfully referred to all the opinions of the district judge, given on various occasions in both foreclosure suits, and also to the Brief which I had the honor recently to submit to the Court in No. 203, *December Term*, 1866.

I beg leave also to refer to the following extracts from the opinions delivered by Mr. Justice Miller, of the United States Supreme Court, sitting as circuit judge of the ninth circuit, in the district of Wisconsin, on the 28th of April, 1864 :

"The mandate of the Supreme Court, which is now before us in the Circuit Court, directs us to ascertain the amount of interest due on these bonds on the first day of March last, after deducting such sums as may be in the hands of the receiver applicable to that purpose ; and that if that sum, with the accruing interest and costs, is not paid within twelve months from the date of the order ascertaining the amount, then the road is to be sold.

"*The Milwaukee and Minnesota Railroad Company* now comes forward and proposes to pay this sum within a short time, to be fixed by the Court, say twenty or thirty days, and asks that an order be made that upon such payment the receiver be discharged, and directed to deliver to said company the railroad from Milwaukee to Portage, with the rolling stock and other appurtenances properly belonging thereto; and asks that a similar order be made in the Howard suit.

"The granting of this order is resisted by the plaintiffs in the Bronson and Soutter foreclosure suit, by the plaintiff in the Howard suit, and by Selah Chamberlain, and by a party describing itself as the Milwaukee and St. Paul Railroad Company.

"It is very obvious that if the plaintiffs are paid all that is due them on their mortgage, the order appointing a receiver in this suit should be discharged, unless some very stringent reason exists for its continuance; and in that event it becomes the duty of the Court to enquire what it will do with a road thus left on its hands, with no further right to hold it, except that arising from the claim of Howard, which will be noticed hereafter.

"The Milwaukee and St. Paul Railway Company is an organization created since the litigation commenced. It is no party to either of the suits named. *It has no shadow of right to the property in question*, yet the personal interests of its corporators are obvious. Owning the Western end of the La Crosse and Milwaukee Railroad from Portage to La Crosse, 105 miles, and organized for the purpose of operating a road, as its name imports, from Milwaukee to St. Paul, the ownership and control of the Eastern end is indispensable to their purpose. They say, in their answer to the petition of the Milwaukee and Minnesota Company, that their corporation and its directors own eight hundred and twenty-four of the bonds secured by the Bronson and Soutter mortgage. They came before the District Court in June last and procured an order that the receiver should deliver to them the Eastern end of the road and all its appurtenances, and they have used them from that day to this as they pleased.

"The Supreme Court declared the proceeding in the District Court to have been without jurisdiction, and the order a usurpation of authority, *yet they come forward now and insist upon being continued in the possession thus illegally acquired.*

"I say they have no shadow of legal claim to the possession of this property. The pretense that in buying the Western end of the road under a mortgage foreclosure they also bought the franchises of the Eastern end, including the right to run it exclusively, and leaving to the owners of the Eastern end, and its prior mortgages, no other right than to receive from them a rent for such use, does not deserve a moment's serious consideration, and will receive from me no other attempt at refutation than the bare statement of the proposition.

"But while *their legal rights* are thus weak, their interest in the matter is of the strongest character. The necessities of their situation require that they should own the eastern end of the road to complete their line from Milwaukee to St. Paul. They own nearly all the bonds secured by the mortgage to Bronson and Soutter.

"Although the Supreme Court has declared that the Milwaukee and Minnesota Company *own* the Eastern Division, the exigencies of the Milwaukee and St. Paul Company require that *they* should own it.

"It is from this source that springs all the fierce opposition to the discharge of the receiver, and to *placing the property in the hands of its owners.*

"The Supreme Court pursued the extraordinary course of taking from the Circuit Court the discretionary power of limiting the time usually given in the foreclosure decrees to pay the money. It also decided that the time in which the payment might be made should be twelve months instead of ninety days, which is the most usual period. And this was done in a case where the plaintiffs had already been four years prosecuting their suit. The reason for this extraordinary case is obvious. It was to enable the Milwaukee and Minnesota Company, which that Court declared to be the owner of the road, to redeem what they considered an immensely valuable property. But this just and benevolent design of the Court is to be defeated by keeping the control of the road in the hands of those *whose interests require it to be sacrificed and sold, that they may buy it in.*

"The owners of the road here proffer to pay every dollar that is due on it, which is uncontroverted, prior to their own claim, and are ready to litigate disputed claims if they can get possession; *yet, for the benefit of those who have no claims, whose interests require them to have their neighbors' property right or wrong,* we are to refuse possession of this valuable property to its true owners, and continue it in the hands of those who will favor this sacrifice.

"I do not trust myself to any expression of the feelings such a course must naturally generate in the bosom of any honest judge, but content myself with placing on the record of this Court my solemn protest and my regret at my utter inability to prevent it."

I also refer to the following extracts from the opinion delivered by Mr. Justice Miller at the April T., 1866, of the Circuit Court.

"At the April Term, 1864, of this Court, the mandate of the Supreme Court was filed in this case, directing this Court to enter a decree in favor of plaintiffs, for full amount of their bonds and interest, and after deducting whatever sum might be in the hands of the receiver applicable to the payment of said interest, to give the defendant a year in which to pay the remaining interest, and if not then paid, to sell the road and its appurtenances.

"The Minnesota Railroad Company, who owned the equity of redemption, thereupon offered to pay into Court the sum due plaintiffs, on condition that the receiver should be discharged, and the road and all its rolling stock placed in posseseion of said Company. A motion to this effect was made, and was resisted by many parties; and *among others, by the Milwaukee and St. Paul Railway Company, which had the actual possession of said road and rolling stock.* The Judges of this Court being divided in opinion on this motion, it was overruled; and the case was carried to the Supreme Court on other matters involved in the final decree.

"The Supreme Court reversed the order overruling the motion of the Minnesota Company, and sent down its mandate directing that an order be entered to discharge the receiver, and let the Minnesota Company into possession, if it should, within a time to be fixed by the Court, pay all that was due on the mortgage, which is the foundation of the suit.

"This order was accordingly made by the Court, on the 18th July last, allowing the Minnesota Company to redeem by payment the sum due, at any time before the sale of the property, which was to take place if the money was not paid within a year from the decree of September, 1864, and ordering that if the money was so paid, that then the receiver and the St. Paul Company should deliver the road and all the rolling stock in controversy to the Minnesota Company.

"On the 1st January last, the Minnesota Company paid the whole amount, interest and costs, that was then due on

said mortgage, and demanded of the receiver and of the St. Paul Company that they should deliver possession of all that the order of the Court required. * * * * *

"The respondents (St. Paul Company) say further, that since said order was made, they have discovered a mortgage of said rolling stock, made long ago to Bronson, Soutter, and Knapp, which is a paramount title to said property, and therefore it should not be delivered to the Minnesota Company.

"This Company, however, being owners of the equity of redemption, are entitled to possession until foreclosure, and I do not perceive that the mortgage to Bronson, Soutter, and Knapp, confers upon the respondents any right to that possession, much less any right to disobey the decree of this Court.

"Several other technical, and as I think frivolous, reasons are given why respondents should not be compelled to execute the decree which I shall not further notice.

"There is one reason, however, and the only real ground on which, as I apprehend, respondents have acted, which I will notice. They say they are the real owners of the property in dispute; that that property is still in litigation, as they are prosecuting appeals from all judgments deciding otherwise; and that it would be great hardship to take the property out of their possession, pending this litigation, especially as it would leave them without stock enough to work their road.

"I am quite sensible of the force of this reason, and have given to it all the consideration which it deserves; and if I could see any right which I had to interfere, I might endeavor to do something to compromise or mitigate the immediate hardship complained of.

"It is to be observed, however, that this claim of respondents to the property is the very matter which was passed upon in the decree now to be executed. No supersedeas bond was filed or appeal taken to stay the execution of the decree, until the case could be heard in the Supreme Court. Besides, *this very decree was entered in pursuance of the mandate of that Court.* The *only title ever yet set up,* so far as I know, to that property by the respondents *was declared by the Supreme Court to be invalid;* for, as I have already shown, a mortgage to Bronson, Soutter, and Knapp can give no title to the St. Paul Company, and may never ripen into an absolute title in any one. Nor are they mortgages in possession, for they are not mortgages at all, or even assignees of the mortgage.

"*This Court has at least three times decided that the St. Paul Company has no title to said property.* The presumption is in favor of the correctness of these decisions. Certainly, in this Court I am bound by them. Now, if these decisions be sound, it follows that for nearly four years the St. Paul Company *has had wrongful possession of this stock. Is it not time it should be given up?* Suppose, however, that these decisions are wrong, and shall be finally reversed, then their property will be restored to them in less than half the time which they have wrongfully held it, if these decisions are right.

"*Under the decree* which is here complained of, the Minnesota Company has paid nearly *half a million of dollars on the faith of obtaining possession of this property*, when they had complied with that condition.

"They had demanded this decree as a condition precedent to investing so much money in an already heavily incumbered road.

"How can this Court, with any pretence of justice, now turn on them and say, we will not enforce this decree ?"

It was therefore the law of this case, to be followed, when once established, in all future proceedings therein, until reversed by the *Supreme Court*, that of the original rolling stock only forty box cars belonged to the Western Division. This law had been established before the inquiry before the auditor commenced, and established not only in this case, but in the sister case, on the sale wherein the St. Paul Company obtained its title and its only title.

It is very clear, therefore, that the auditor had no power to open this question, or to allow it to be litigated before him. Any attempt to litigate the question before him, to disturb this law of the case would have been futile, and if the St. Paul Company have succeeded in getting before the auditor any evidence in conflict with this law of the case, (which is by no means conceded,) the Minnesota Company had a right, and the auditor was bound to disregard such evidence. As before the auditor it was clearly irrelevant. The report of the auditor shows he considered himself bound by this law of the case. (*Trans. No.* 182, *p.* 77.)

The incongruity and absurdity of the auditor, appointed at

the stage, was, and with his limited powers, attempting to reverse this previous settled law of the case is too obvious to require to be pointed out.

Again the St. Paul Company having obtained possession as receiver, as will be shown further on, and on the basis that they owned only forty box cars when they came to discharge themselves of the obligations assumed by them in their obtaining possession, (which, as to the St. Paul Company, is the real meaning of the inquiry before the auditor,) are *estopped* from claiming ownership in more than forty box cars.

Finally as to these exceptions, the St. Paul Company are seeking by this appeal an entirely inappropriate remedy--a remedy which, if it exists at all, exists only in the appeal, No. 103, December term, 1866.

Of the points raised by the exceptions there remains only the allowance of the Court of the eighth exception of the Minnesota Company to the report of the auditor. The eighth exception is as follows: (*Trans. No.* 182, *p.* 501.)

8th Exception. For that the said auditor has allowed as a credit the sum of $27,497.84 for new buildings erected by the Milwaukee and St. Paul Railway Company without order of this Court, and reported thereon as follows:

"The item No. 28, contained on the credit side of the account, 'Exhibit E,' new buildings $27,497.84 is also specially excepted to by the Milwaukee and Minnesota Railroad Company in and by Exhibit K K K. I have ascertained and report that the sum was expended for the erection of new buildings on the machine-shop grounds in Milwaukee, extension of depot buildings, erection of water-houses, and other improvements on the Eastern Division; that *all these erections were not necessary for the Eastern Division operated as a road commencing at Milwaukee and terminating at Portage City*, and not forming a part of a through route to the Mississippi river, that these improvements were projected and commenced, and the expenditures mainly made while the two divisions of the road were operated together as one through line, and before the opening of another route from Portage City to Milwaukee was contemplated, and that as the said railroad from Milwaukee and Portage City was then circumstanced these buildings and improvements were necessary to its proper and profitable operation, and the expenditure

was properly and prudently made. I therefore audit and allow this credit, amounting to said sum of $27,497.84, to the Milwaukee and St. Paul Company, and disallow the said exception thereto.

"Whereas the said auditor ought to have disallowed said item of $27,497.84, for the reason that the same was not directed by any order of the Court, and was an unnecessary and improvident expenditure upon the mortgaged premises in this cause."

The building, the cost of which was disallowed by the Court, was found by the auditor to be not necessary for the Eastern Division operated as a road by itself, and only necessary or proper in reference to the Eastern and Western Divisions being operated under one management. They were erected without any order of the Court as the record shows, and the expenditure was an arbitrary expenditure by the St. Paul Company, looking to their own advantage and interest as owner of the Western Division. It is only necessary to consider how the St. Paul Company obtained possession of the Eastern Division, and what was its relation thereto, to see the propriety of the disallowance of this item. They obtained possession of the Eastern Division by presenting a petition to the District Court in both suits, and in which petition they as a condition of obtaining such possession offered to account to the receiver of the said Eastern Division for the net tolls and income under the direction of the Court and to submit to such other rules and regulations thereto as the Court might make. On such petition the Court put them in possession, by an order, which it declared to be an order modifying the order appointing the receiver, and for the declared object of promoting "the policy of the State and the interest of the public," which required that both divisions should be run as one road, by one corporation. In the order putting them into possession, the Court only authorized them as far as the Eastern Division was concerned, to operate the same in connection with the Western Division as one whole line. It also required the St. Paul Company to permit access to and examination of its books, and its business and transactions, and it required the said Company

out of the revenues of the road to keep the Eastern Division in good order, and to render monthly to the receiver an account of the revenues and disbursements of the whole road, and to pay over monthly to the receiver the Eastern Division's proportion of the net revenues of the road. The Court also required the St. Paul Company to give a bond in $100,000, conditional that the Company would obey this order of the Court and any subsequent orders relating to the road, and would keep the road and rolling stock in good order, and manage and conduct the same to the best advantage of the public and its creditors, and make the monthly returns and payments above mentioned. (*Trans. p.* 358.) The St. Paul Company gave such a bond. It is clear from this statement, that the St. Paul Company became thereby as to the Eastern Division a receiver thereof, under the original receiver, with all the powers and subject to all the obligations of such a receiver and no other. And in this point of view they have always been looked upon in all the proceedings in the Court below and by this Court. See *Trans. No.* 182, *pp.* 22, 23, 24.

And the appellants, in their Brief, concede this view to be correct; thus Mr. Carey (*p.* 26) says:

"The order of June 12, 1863, *in the Howard case, made the St. Paul Company the custodian of this property under the receiver, or, if you please, his agent, or a quasi receiver.*"

But whether a receiver or not their rights are limited by the terms and conditions of the order of June 13, above recited.

And it is very clear that neither under the terms of that order, or by any general power of a receiver, were they authorized to make the expenditure referred to in this exception. Being an unauthorized expenditure made for the benefit of the St. Paul Company, and of which they have probably reaped the whole benefit during the long period they ran the whole road, the Court is bound by law to disallow it. Nor can the St. Paul Company escape these positions, because this order of June 13, 1863, is void for want of jurisdiction of the Court. They are estopped from taking any such position. So long as they enjoyed the advantage

of possession under said order, they cannot repudiate the advantages to flow from the order to the party whose possession was thus divested, but the latter party has a right to call upon the Court to enforce in his favor all the beneficial provisions of the order.

It is understood that a general objection is made going to the whole report, being a jurisdictional objection, that the St. Paul Company is no party to this action, and that the Court has no jurisdiction to proceed against them summarily.

In addition to the facts just recited, as to the petition of the St. Paul Company as receiver, the Court are reminded under this head that the order of June 13, 1863, was vacated on the 28th of April, 1864, and an order made requiring them to deliver the Eastern Division and rolling stock thereon; on which occasion the receiver of the road pretends that he could not obtain possession of the whole rolling stock of the St. Paul Company, but was compelled by their contumacy to make a temporary arrangement for the further use of a part of the rolling stock, (*Trans.* 182, *p.* 22.)

Besides becoming connected with the suit by its receivership, and making itself a party by the presentation of its petition and the orders obtained therein, the St. Paul Company, without objection to the jurisdiction, appeared before the auditor by council, took part in all the proceedings before the auditor, examined and cross-examined witnesses before him, litigated without objection to the jurisdiction what amount they were bound to pay, took exceptions again to the auditor's report without objection to the jurisdiction, and argued these exceptions before the Court—succeeding in some of them.

It appeared before the Circuit Court in April, 1864, to oppose the application of the Minnesota Company for possession, and also in this Court in the appeal from the order denying that possession on the decision of which the mandate was issued, so that the objection comes at a late day with the accustomed ill-grace which distinguishes the St. Paul Company in this litigation.

It would be a singular omission in the law if a party could obtrude himself upon a litigation in a Court of Equity, and by covenants and agreements, and assuming obligations and respectful petitions, and promising to obey all future orders of the Court, obtain possession of the subject matter of the litigation as a temporary receiver, and when a Court of Equity should attempt to compel the performance of his covenant to account for the earnings of the property of which he had thus obtained possession, he can reply, "I am not a party to your suit; you have no jurisdiction over me in your action; your whole proceeding is as to me *coram non judice*." Fortunately this is not the law, and argument on this point, either by way of principle or authority, seems unnecessary, but the following extracts from the decision of this Court are conclusive on this subject:

Blossom *vs.* Railroad Co.; 1 Wallace, 655.

"Is the appellant so far a party to the original suit that he can appeal?

"It is certainly true that he cannot appeal from the original decree of the foreclosure, nor from any other order or decree of the Court made prior to his bid. It however seems to be well settled that after a decree abjudicating certain rights between the parties to a suit, other persons having no previous interest in the litigation may become connected with the case in the course of subsequent proceedings, in such manner as to subject them to the jurisdiction of the Court, and render them liable to its orders; and that they may in like manner acquire rights in regard to the subject matter of the litigation which the Court is bound to protect. Surities, signing appeal bonds, stay bonds, delivery bonds, and receiptors under writs of attachment, become *quasi* parties to the proceeding and subject themselves to the jurisdiction of the Court so that *summary judgments* may be rendered on their bonds and recognizances—so in the case of a creditor's bill or other suit, by which a fund is to be distributed to parties, some of whom are not before the Court; these are at liberty to come before the master after the decree and establish their claims to share in the distribution.

"A purchaser or bidder at a master's sale in chancery subjects himself *quod hoc* to the jurisdiction of the Court and can be compelled to perform his agreement specifically. It

would seem that he must acquire a corresponding right to appear and claim, at the hands of the Court, such relief as the rules of equity proceedings entitle him to.

Minnesota Co. *vs.* St. Paul Co., 2 Wallace, 632, 634."

"The road and rolling stock, which are the subject matter of this controversy, were placed in the hands of a receiver in the progress of that suit; and he was in possession of the rolling stock when, by an order of the District Court, made June 12, 1863, in that suit and a similar order of the same date, in another suit, it was all delivered to the Milwaukee and St. Paul Railway Company.

"At the last term of this Court we decided (Blossom *vs.* La Crosse Railroad Company; 1 Wallace, 405,) that by the act creating the Circuit Court for the District of Wisconsin, the District Court lost its power to make such orders, and they were void. The consequence of this ruling is that in contemplation of law, this property is still in the hands of the receiver of the Court. If in the hands of receiver of the Circuit Court, nothing can be plainer than that any litigation for its possession must take place in that Court without regard to the citizenship of the parties. If it has been taken illegally from the custody of the receiver, it is equally clear that the Court has not lost thereby the jurisdiction over the property, or the right to determine where it shall go."

Again, speaking of the St. Paul Company, the Court says:

"It would indeed be very strange if these parties can come into Court by a petition and get possession of that which was the subject of litigation, and then when the wrong they had done by that proceeding is to be corrected, they shall be permitted to escape by denying that they were parties to the suit. In the case of Blossom *vs.* the Milwaukee and Chicago Railroad Company, 1 Wallace, 635, this matter was fully discussed, and it was then held, that a purchaser or bidder at a master's sale subjected himself *quod hoc*, to the jurisdiction of the Court, and became so far a party to the suit by the mere act of making a bid, that he could appeal from any subsequent order of the Court affecting his interest."

APPEAL IN No. 212.

This appeal (*Trans. No.* 212, *p.* 48,) is from so much of the order of 18th July, 1865, (*Trans. No.* 182, *p.* 552,) as directs the delivery to the Minnesota Company of "all the rolling stock that was on the whole La Crosse and Milwaukee

Railroad or belonged or appertained thereto, when the receiver was appointed, except forty box cars therein specified on certain conditions in said order named."

This order was issued as it recites on the mandate of the Supreme Court of the United States, (*Trans. No.* 182, *p.* 15,) being the mandate set forth on *page* 3 of this brief.

The order in no wise departs from the mandate. The mandate does not undertake to describe what rolling stock is appurtenant to the Eastern Division, and the order is therefore free to follow in that respect, and does follow the settled law in this case—namely, the distribution of rolling stock described in all the previous orders in both suits, and declared in 2 Wallace, *page* 642, to be, until reversed by the Supreme Court, the law of the case.

As to the objection that the order directs both the receiver and the St. Paul Company to deliver possession, I have already anticipated and answered the jurisdictional part of the objection. The other part of this objection, that the order appealed from is broader than the mandate, scarcely needs an answer, as it is perfectly clear that the mandate warranted such an order, not only against the receiver but against any and every person, deriving possession from him or from the Court in whose possession the property was.

HENRY A. CRAM,

Counsel for Appellees.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1866.

JAMES T. SOUTTER AND SHEPHERD KNAPP, Survivors of GREENE C. BRONSON, Deceased, Appellants,
vs.
MILWAUKEE AND MINNESOTA RAILROAD CO.
} No. 203.

BRIEF FOR APPELLEE.

The appellants are trustees in land grant mortgage on Western Division La Crosse and Milwaukee Railroad.

The appeal will be found on p. 2, *Trans. No.* 203.

It was taken July 15, 1865, from—

1. Report of masters, October 7, 1861, p. 115, *Trans. No.* 159;

2. Order of District Court, January 7, 1862, overruling the exceptions of appellants to that report, p. 136, *Trans. No.* 159;

3. Final decree, January 13, 1862, p. 428, *Trans. No.* 159.

The masters reported—p. 118:

"We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof, was at the date of the filing of the bill of complaint in this cause, five hundred and sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents; and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235.78."

"And we have ascertained and do further report that of the said rolling stock *forty box cars,* amounting at the cost price thereof to $31,979.64, and numbered, (*setting them out,*)

are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause; the said cars having been purchased with and by the proceeds of a portion of the bonds to which this mortgage is collateral; *and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter*, and bearing date on the seventeenth day of August, A. D. 1857."

The appellant's fourth exception to the report, (p. 133,) was as follows:

"4th. For that the said master and special masters have in and by their said report certified that *all the rolling stock on said road* (except forty box cars which are specially named in said report) *was covered by and included in the first mortgage* upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857."

Whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver, since the commencement of this suit, amounting to the sum of $53,600) was covered by, and included in, the mortgage given to the said cemplainants, and described in the bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens; and that as to the rolling stock purchased by said receiver above mentioned, 105 to 200 thereof was covered by the mortgage described in the complaint, and that to that extent the complainant's said mortgage was a first lien thereon.

The order of Court upon the exceptions contains the following, (*p.* 136:)

"And it is further ordered by the Court that the fourth exception of complainants be, and is hereby overruled as to the forty box cars, which are covered by their mortgage. And it is further ordered by the Court, that on said exception the said report be so modified that *all the other rolling stock that was on said road when the receiver was appointed, except the said forty box cars*, is covered by, and included in the

first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or procured since the Court has held possession, by it received, costing $147,942.63, be applied to the said mortgage, in this bill, in proportion to the net revenues on such portions of the road said mortgages respectively covered since the appointment of the receiver."

I

It is important *in limine* to understand who are the parties litigant on this appeal, their respective interests, and how far such parties are bound by the decision of this Court in this suit, in 2 Wallace, 609, and what remedies this Court may administer on this appeal. These determined, everything becomes very simple.

FIRST.

The parties—

a. The appellants are the plaintiffs in the foreclosure suit below, and are the trustees in the land grant mortgage.

b. The respondents are the defendants in that suit including the Milwaukee and Minnesota Company. The purchasers under the decree are not parties to this appeal, and cannot therefore be bound by the decision thereof.

SECOND.

The real interests of the parties—

a. The obvious and true interest of the appellants is to establish that only a part of the premises covered by their mortgage has been sold, and that they have a right to have the part omitted sold, or else the whole sale set aside, and the part previously sold and the omitted part sold together, (which latter course it will be shown is beyond the power of the Court.)

b. The interest of the Minnesota Company as owner of the equity is to have it established, that all the premises mortgaged have been sold, and that of the rolling stock that came to the hands of the receiver, only forty box cars were covered by the mortgage.

c. The St. Paul Company, the actural purchaser, is not represented on this appeal, is not a party to the suit, and

has no interest in having the sale, or the decree directing the sale, disturbed; and whatever interest it has, is not only not represented by the appellants, but the interest of the latter on this appeal is hostile to the St. Paul Company.

THIRD.

How far has 2 Wallace, 609, (a decision in this very suit,) settled anything?

What position may we safely take from that decision as a starting point?

That case was a supplemental bill in the nature of an original bill, brought by the Minnesota Company, to have settled the very questions sought to be determined on this appeal. The bill set forth all the mortgages on both divisions, (this record does not contain them all,) and made parties defendant the present appellants and the St. Paul Company, which is another advantage that case has over this appeal. After the decision in 2 Wallace, 642, remanding that case, an answer was put in, and the case is here again on the respective appeals of the St. Paul Company, the Minnesota Company, and the trustees under the land grant mortgage, being Nos. 416 and 418 on the docket, December T., 1866.

Now, the Court in their opinion say, *p.* 632:

"The present suit is really a continuation of that one," (meaning the foreclosure suit in which the present appeals are brought.)

"The rights of the parties depend upon the construction which is placed upon the acts of the Court in it; and the present bill is necessary in order to have a *declaration of what was intended by the orders and decrees made in that suit*, and to enforce the rights which were established by it."

Again, speaking of the outrageous, unjust, and illegal orders by which the St. Paul Company obtained possession of the whole rolling stock, the Court, after having pronounced these orders illegal, say, *p.* 633:

"An unjust advantage has been obtained by one party over another by a perversion and abuse of the orders of the Court, and the party injured comes now to the same Court to

have the abuse corrected, and to carry into effect *the real intention* and *decree* of the Court, and that while the property, which is the subject of contest, is still within the control of the Court and subject to its order."

Again the Court say, (I quote from the unabreviated opinion of the Court—See *p.* 164, Record No. 416:)

"In reference to the road-bed, which is covered by these various mortgages, there is no diversity of opinion; but in reference to the rolling stock it is contended by the appellees that these several mortgages were *successive liens* on *all* the rolling stock of the Company, and by appellants that they are liens *only* on the rolling stock *belonging* to, or *in some way identified with, that part of the road included in each mortgage respectively.* At first blush, it would seem that in a road used continuously as one road, there could be no such definite relation between any particular division of the road and any particular portion of the stock.

"*But as it was competent for the Company which owned all the road and all the stock, to assign certain stock to one division, and certain stock to the other division,* when the road was divided for the purpose of making mortgages, we cannot assume as a fact that there was no such division of the rolling stock; but must look to the language of the mortgages themselves to see if any such intention is expressed. If it is not, then obviously the other view prevails, and the mortgages are successive liens on the whole stock.

"The descriptive part of the Palmer mortgage is in the following words:

"'All their said road, from its eastern termination in the City of Milwaukee to Portage City, in the county of Columbia, being ninty-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied, or so to be for right of way within the limits aforesaid, together with bridges, fences, privileges, rights, and real estate owned by said Company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tolls, income, issues and profits to be had from the same, and all lands used for and occupied within the limits aforesaid, by depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all locomotives, engines, and tenders, passenger cars and freight cars, shops, tools, and machinery now owned, or hereafter to be acquired by said Company, and in any way belonging or

appertaining to said railroad now constructed and to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits and franchises thereunto appertaining.'

"The corresponding part of the mortgage on the Western Division is as follows:

"'All and singular the several tracts, pieces or parcels of land which are now or may hereafter be, or constitute the site of the road, way, turnouts, engine houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built or made hereafter; and also all and singular the locomotives, engines, and other rolling stock, and all the other equipments of every kind and description which have already been or may be hereafter procured for or used on said road, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured for or used *in connection with said roads, or either of them*; and also all and singular the rights, liberties, privileges, and franchises of said Railroad Company, of every kind and description, relating to said roads.'

NOTE.—*The "said roads, or either of them,"* refers to the roads—
1. From Madison to St. Croix River, or Lake.
2. From *Portage* to La Crosse. (See p. 11, Transcript, No. 159.)

"The language thus quoted has been the subject of much minute criticism on both sides, and, when considered in reference to the rolling stock alone, may not be free from doubt as to its construction. But when we consider it in reference to the clear purpose of the parties to make the mortgage distinct and different as to everything else conveyed by them, we conclude *that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the word.*"

The Court further say, (2 Wall., 636,) that the complainants in this foreclosure suit, by omitting to make the mortgage on the Eastern Division parties defendants, "show their own construction that their mortgage, and that of Bronson and Soutter, did not cover the same stock, *which would only be because it was appurtenant to the Eastern Division.*"

Again the Court say, p. 636:

"About the time that foreclosure suit was commenced, (meaning the foreclosure on the Western Division,) a suit was instituted in the same Court to foreclose the second, or Bronson and Soutter mortgage, on the Eastern Division, but the holders of the Palmer mortgage were not made defendants on either suit. The two suits progressed *parti passu* to a final decree, but while the Western Division went to sale, an appeal stayed proceedings in the Eastern Division case, and no sale has yet been made under that decree. Very shortly after these suits were commenced, the Court made an order of reference in each of them to masters in chancery, who were the same masters in both cases. These references were for the purpose of ascertaining the amounts due on these bonds, the amounts due certain judgment creditors, *and the amount of rolling stock on the whole road, and the amount included in each mortgage.*

"The language of the order of reference on the latter point in the original suit in the case is as follows:

"'And it is further ordered that masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof *that is covered by this mortgage*, also in the *first and second mortgages respectively.*

"'The reference in the other case is in language almost identical.

"'Now it is argued that the object of this order was to ascertain and settle the *priorities* between these different mortgages. No such inference can be made from the language, for it says nothing about priorities in date, or superiority of lein. There was no occasion or reason for ascertaining those priorities in that suit, *for the respective parties were not before the Court, and could not be bound by its decree.* It would not even bind complainants, because there would be no mutuality in the estoppel. It is an impeachment of the legal attainments of the Court, and of the counsel, to suppose that they would make a reference to a master to ascertain a fact which could have no influence on the suit, and, if passed upon by the Court, could effect nobody's interest in the slightest degree.

"'But the language of the order clearly implies a different thing. The object is to ascertain *what is covered by one mortgage to the exclusion of the other;* an object which had manifest pertinency to the duty which the court was called upon to discharge. The judge who made these orders delivered an opinion at the trial, in which he decides that the rolling stock of a railroad is a fixture; and if we sup-

pose him to have considered that which was mortgaged to Palmer, and to Bronson, and to Soutter, as a *fixture on the Eastern Division*, and that which was mortgaged to Bronson, Soutter, and Knapp, *as a fixture on the Western Division,* we have a clear idea of what he wished to ascertain, in view of the decision he was to make in the two suits.' "

The opinion then states the reports of the masters and the exceptions taken thereto, the overruling of the same, and proceeds, p. 639 :

" We regard this as a judicial decision, that complainant's mortgage did not cover the rolling stock which was covered by the previous mortgage to Palmer, and that it only covered the forty box cars, and such proportion of the rolling stock purchased by the receiver as the net earnings of the Western Division. This order modifying and confirming the report of the masters settled the rights of the parties, and by that decision they must stand until it is reversed on appeal, or set aside by some direct proceeding for that purpose.

"The final decree ordering the sale proceeds upon the same view of the rights of the parties. After ordering a sale of the property mortgaged, and copying the language given in the mortgage, as descriptive of what was mortgaged, the decree adds :

" ' With forty box cars, &c., and such portion or share of the rolling stock purchased and procured by the receiver, costing $147,942.63, as the net revenues of the portion of the road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to a prior mortgage.

" ' That is to say, having decided that what is covered by the other two mortgages is not covered by this ; it is not subject to sale in this suit.

" ' The marshal, however, who was directed to make the sale, instead of a master commissioner, did sell all the rolling stock, and that sale was confirmed by the order of the District Court of May 5, 1863.

" ' It is too clear for argument that a sale by the marshal, authorized by a decree, is without any validity. Does the order of the Court confirming the sale make it valid ?

" ' Upon principle the question is by no means free from difficulty. We are clear that a sale without a decree to sustain it would be a nulity, and we doubt if a Court can make

it valid by a mere general order of confirmation. If, however, an issue had been made by exceptions or other proper pleading, as to the question whether any particular piece of property had been included in the *decree or order of sale*, and the Court had decided that it was so included, it might be an abjudication upon the construction of the decree which would bind the parties. Nothing of the kind occurred here. *There is every reason on the contrary to believe that the Court had no suspicion that the marshal had sold more than the decree authorized.*

"'On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for possession of the property which they had purchased. The Court thereupon made an order "that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said road and appurtenances, being Portage City and La Crosse, *and the rolling stock and property specially described in the decree.*" The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver.

"'The fact that this was ordered to be delivered to the purchasers and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed the sale of all the rolling stock on the road to the purchasers at the sale. It is true, that over a month later he ordered the Eastern Division of the road, and the remainder of the rolling stock into the possession of the same Company. But this was *done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned. This he declared in an opinion delivered at the time, and it is substantially indicated in the orders themselves.*

"'In the light of these facts, we cannot give to the order of confirmation in this case the effect of making valid the marshal's sale, however the rule might be on that subject in other cases. But we do not mean to intimate that in any case a sale by a marshal, or master in chancery, can be valid, when there is no decree to support it. Cases in this Court (Schriver v. Lynn, 2 Howard, 43; Brignardello v. Gray, 1 Wallace, 627,) would seem to indicate that it cannot.'

"The order of June 12, 1863, delivering possession of this property to the Milwaukee and St. Paul Railroad Company, has been declared by this Court to be void for the want of

jurisdiction, and has been set aside by this Court which made it. It therefore affords no support to defendants in this claim to the rolling stock in dispute.

"We have thus examined, with care and patience, *the mortgage*, and the various orders and decrees of the District Court, on which the claim of the Milwaukee and St. Paul Railroad Company to the ownership of this property depends. There is in all of them some want of clearness and precision, including the mortgage itself. Before the Court ordered the sale, it should have made clear all the ambiguities. It evidently attempted to do so, and we think if it has not in all cases effected that purpose fully, it has furnished the criteria by which it can be done. And although the language of its orders is not always free from doubt, we have been able to satisfy ourselves of the Court's intentions.

"The title of appellant is clear on the record, unless it has been diverted by these proceedings. We think that they do not confer title to the rolling stock on the Milwaukee and St. Paul Railway Company, nor divest the appellant, except as to the forty box cars, and the proportion of the stock purchased by the receiver, which the net earnings of the Western Division bore to the net earnings of the Eastern Division, *and that they also decide* that the mortgage under which they claim did not include any more."

These things, then, may be considered settled—

1. That there is another suit pending, and which is supplimental to this cause, and is in this Court for review, which this Court pronounced the proper suit to declare "the intention of the orders and decrees in the suit, and to enforce the rights established by it."

2. That the land grant mortgage and the first mortgage on the Eastern Division covered only rolling stock appurtenant to each separate division of the road, and that they were not liens on the same rolling stock, differing in the order of dates, but liens on entirely different rolling stock.

3. That by the reference in this suit and the decree of sale thereon, it was determined that the land grant mortgage covered only forty box cars; that these were all the decree directed to be sold; that so far as the marshal sold more than the forty box cars, his action was invalid, and the order of the Court confirming it did not make it valid.

These propositions were settled in December, 1864, and since then this vast and constantly increasing litigation has been continued in consequence of the contumacious conduct of the St. Paul Company, until at this term there were seventeen cases on the docket of the Court, to say nothing of the numerous cases in the Courts below. Of course the conduct of this litigation and of the parties since December, 1864, has been influenced and determined by the principles thus supposed to be settled; to depart from them now would only aggravate the confusion and ruin that this controversy produces, and open a new and as yet unexplored field of fresh litigation. In this connection it is submitted that the decree and advertisement of sale and the report of sale contained exactly the same description of the premises sold as the mortgage did, in addition to the description of the forty box cars, the latter being connected with the mortgage description by the conjunction "and," (*Transcript* pp. 12, 430, 194*, 196*.)

FOURTH.

What remedies may the Court adminster on this appeal under any and every possible view that may be taken of this case?

In this connection it must be remembered that the appellants made no objection to the sale, went on and enforced their decree, has their sale confirmed, and received the money from the purchaser.

a. The Court cannot set aside the sale. (See the authorities collected in Mr. Cary's brief, p. 39.)

In Bronson *vs.* Railroad, (2 *Black*, p. 530,) the Court say:

"If the decree was reversed, there could be no restitution of the road, its property and franchises, for purchasers at a judicial sale are protected."

b. In the next place it is not exactly the duty of this Court to give the appellant an opinion that the proper construction of the decree of sale was that it included all the rolling stock, and then affirmed the decree, as they are invited to do by counsel for appellants at pages 27 and 28 of his brief. This Court sits to hear and decide appeals, not to

give opinions to parties or to give "authoritative expositions" of the decrees of other Courts.

Besides, in this connection, the question at once presents itself: What interest have the appellants in having the decree construed and explained, and then *affirmed?* Would it put any money in their pocket or advance any interest of theirs?

No one but the St. Paul Company are interested in having this course pursued; The counsel does not represent them on this appeal; They are not a party to it, and would not be bound by any decision made in it.

c. The Court cannot modify the decree by making it include other property, without directing the other property to be sold. The appellants have no interest in such a modification; but only the purchaser, and he has no such right, does not ask it, and is not represented.

d. The inquiry then presents itself: Can the Court modify the decree as the appellants ask, (p. 38 of their brief,) by providing that it shall include the additional rolling stock, and that the marshal proceed to sell the same. We submit that if even there had been error, and the appellant on this record should have had such a remedy and such a decree, he cannot have it now, because he has enforced his decreee and sold the mortgaged premises, which, under the circumstances of this case, and taking into view the character of the property, is a waiver of and a bar to his appeal. It is to be borne in mind that the property that would be thus disposed of on a second sale is rolling stock, comparatively worthless when severed from the road. See the dissenting opinion of Nelson J., 2 Wallace, 642, as to the value of rolling stock severed from a road.

The party upon whom this sacrifice would fall is the owner of the equity of redemption, and it is as much entitled to be protected from such an injury by the principle we invoke as the purchaser in case of a reversal of a decree of sale.

e. Whilst it is conceded that in many cases the enforcement of a decree or judgment will not present or bar an appeal, yet in many other cases the Court hold the appeal

inconsistent with the enforcement of a decree. Where there can be a judgment of restitution, or where no injury is inflicted by the enforcement of the decree that cannot be redressed on its reversal, or, where, as in *Merriam vs. Haas*, 3 *Wallace*, 687, in a foreclosure case, a certain amount is conceded to be due and the plaintiff receives the same, he may still appeal.

But, in a case like this, when there has been stricken from the mortgage premises an item comparatively worthless, if sold alone, the mortgagee has no right to proceed and sell the mutilated railroad and then appeal for the purpose of selling the severed item; but his duty is to redress the error first, as it is the right of the owner of the equity to have the whole sold together.

Taylor vs. Savage, 17 *Peters*, 226.
Bennet vs. Van Syckle, 18 N. Y. Rep., 481.
Vail vs. Remsen, 7 *Paige*, 206.
Ubsdell vs. Roat, 3 *Abbott, R.* 143.

The authorities cited by the counsel for appellants do not sustain his 5th point, (page 38,) as a general proposition; they merely show that in particular cases and under particular circumstances a party may enforce a decree and also appeal. As evidence of this, a summary of these authorities is here presented.

Dyett vs. Pendleton, 8 *Cowen*, 326.

After judgment and error brought, no bail being in, the defendant in error sued out a *fi. fa.*, and the plaintiff in error gave his notes for the amount of the judgment, agreeing that it would stand as security, held no ground for setting aside or staying proceedings on the writ of error. Even the payment of the judgment would be no ground for this. Per Jones, Chancellor, and Colden, Senator.

Answer to this case: Not applicable; it being the defendant in the judgment who brought the suit of error, and whom it was claimed had lost his right to appeal.

Clowes vs. Dickenson, 8 *Cowen*, 328.

A party may appeal from a final decree in chancery at any time within five years, though he have accepted the money awarded by the decree.

In this case the chancery decree was for damages, interest, and costs, and the plaintiff appealed because he wanted more. Spencer, Senator, said: In the absence of any adjudged case, I cannot undertake to introduce an exception into the statute allowing appeals and writs of error unless there be some strong reason assigned which shows that such exception would be within the meaning of the legislature. I cannot discover any such reason in the fact that a party accepted what he was entitled to by the judgment of a Court, and which would belong to him in any event, for I cannot admit the correctness of the argument of the counsel of the respondents that this decree may be reversed *in toto*.

Higbie vs. Westlake, 14 N. Y., 281.

A creditor may appeal from a decree of distribution made by a Surrogate, notwithstanding he receives on account of his demand the amount awarded to him by it.

Denio, C. J., says: There is no weight in the objection that the creditors who appealed had received their dividends under the decree of the Surrogate. They were certainly entitled to the amount paid them, and there was no inconsistency on their part in receiving that amount, and then appealing for the purpose of obtaining a reduction of the allowance for expenses which would give them a further dividend.

Erwin vs. Lowry, 7 *Howard*, 173.

When the Court ordered that a sum of money should be paid over by the party in whose favor they decided to the losing party, the reception of this money by the party, before the writ of error was sued out, will not be a sufficient cause for dismissing the writ of error.

In this case, in a petition filed by the successful party, Lowry, an order was made giving the petitioner possession of a plantation and slaves; but requires as a condition that he should pay the defendant (*Erwin*,) $436, or else deposit

it with the sheriff to defendants' credit. Lowry paid it to the sheriff, who paid it to Erwin, and after this Erwin appealed.

Merriam vs. Haas, 3 *Wallace*, 687.

Bill for foreclosure of mortgage for $6,000. Defendant answered, admitting $4,000 with interest due, and submitting to a decree for that amount. Decree for $4,000, with interest; plaintiff appealed. Afterwards there was a sale and report of master; but before it was confirmed, defendant paid amount of decree. Motion to dismiss, appeal denied.

United States vs. Dashiel, 3 *Wall.* 688.

Where a writ of error is taken to this Court by a plaintiff below, who, previous to taking the writ, issues execution below and gets a partial, but not a complete satisfaction on his judgment, the writ will not in consequence of such execution be dismissed.

Mr. Justice Grier, (with whom concurred Nelson and Swayne, J. J.,) dissenting: I think this writ of error ought to be dismissed. The plaintiff having elected to take execution and satisfy his judgment, has no longer any judgment upon which the writ can operate. His election to accept and execute his judgment below is a retraxit of his writ of error. Such has been the unanimous decision of every Court of law that has passed on the question. Appeals in chancery can furnish no precedents for a contrary decision. A decree in chancery may have a dozen different parts, some of which may stand good and be executed, while others may be litigated on appeal; a judgment at law is one thing. The plaintiff cannot divide his claim into parts, and when he obtains judgment for part, accept that part and prosecute his suit for more. Having a right to elect to pursue his judgment or his writ of error, he cannot elect to have both.

In Bronson vs. La Crosse Railroad Company, 1 *Wallace*, 409, which was decided after the decision of the motion to dismiss appeal, (*Merriam vs. Haas*,) the Court (*Nelson, J.*) say:

"Another reason why this particular case is not within the provisions of the 3d of March is that the District Court, even if it had jurisdiction of the proceedings, would not be warranted in taking any steps in the execution of the decree in favor of the appellants. They having appealed from the decree, it would be against all reason and principle to permit them to proceed in the execution of it, pending the appeal. They assert that the decree is founded on error, and for that reason should not be executed, but should be reversed and corrected in the appellate tribunal."

It is difficult from the cases to discover a clear proposition which shall determine when the enforcement of a decree or judgment is at bar to an appeal, and probably the safest rule is to consider in each case whether the proceedings are inconsistent, or will work irreparable injury. In *Benkhand vs. Babcock*, 17 *Abb.*, 422, an attempt is made to define the rule by Robertson, C. J., as follows:

"It is claimed by the defendants that the plaintiffs have waived their appeal in this case by accepting from them the amount from the verdict in favor of the latter with costs. Numerous authorities have been cited to us on the argument to sustain that proposition, but they will all be found to be cases where an appellant had attempted *actively* to enforce either the whole of a judgment, order, or decree, in his favor, or else some part thereof, connected with or dependent upon such other part thereof as he may have appealed from, or else where he had availed himself of some benefit or favor granted or offered to him by such judgment, order, or decree, as an alternative to exercising the right of appeal."

This case contains one test which is often applied, *viz:* Whether the *appellant* himself is *actively enforcing* the decree —an important distinction, as in some cases where the appeal was allowed there was a mere *passive* reception of money by the appellant.

f. If the record shows error in the distribution of rolling stock to the different mortgages, it arose on the reference to the master, and it can only be corrected so as at the same time to do justice to the owner of the equity of redemption by setting aside the decree and sale and opening the reference, and having the report corrected and a new decree and sale; and insomuch as this Court can not set aside the

sale, the appellant has lost his remedy by proceeding to the sale.

The mere statement of the appellant's own view of the case is enough to show this:

A mortgage of a railroad, including rolling stock on a reference preliminary to the decree, has the injustice done him of a decision, excluding the rolling stock from his mortgage, and is obliged to take a decree for the sale of the road without the rolling stock. The owner of the equity, a party defendant, has not been instrumental in this, but has allowed the bill to be taken as confessed. Instead of appealing and having the decree corrected, the mortgagee first sells the railroad alone, and then appeals and asks to have the rolling stock sold by itself. What more frightful injustice to the owner of the equity to sell his road and his rolling stock by separate sales? Such a sale would be productive of a great sacrifice in each instance, and, in the case of the rolling stock, ruinous.

No Court of Appeal will do this when ruin and sacrifice are solely caused by the mortgagee's insisting on enforcing an erroneous decree and then appealing from it.

From the foregoing considerations it is claimed that even if there were error in the decree, as to the amount of rolling stock included in the mortgage, the judgment must be affirmed.

II.

There was no error committed in any part of the proceedings in reference to the rolling stock.

1. And under this head we still insist that, by virtue of the decision in 2 Wallace, 609, it is the law of this case, that the land grant mortgage covered only certain rolling stock that was incident to the Western Division, and constituting only a portion of the whole rolling stock of the road, and that all the rest of the rolling stock not covered by the land grant mortgage was covered by other mortgages, and belonged to the Eastern Division.

2. It is submitted that without relying upon 2 Wallace, as *res adjudicata* on this point, the language of the mort-

gages and the word "*roads*" in the land grant mortgage, relating to the Western Division, conclusively prove this. The language of the mortgages is conclusive on this point. (*Transcript, pp.* 11, 12, *No.* 159.)

3. The supplementary mortgage relied on by appellant, and executed after all mortgages on such division were delivered, does not prove a different intent. This supplementary mortgage, the appellant's brief states, was not "counted on" or foreclosed in this action, and is claimed outside of these proceedings to be an unforeclosed mortgage presenting an independent right to the rolling stock; to which claim, when properly presented, there are conclusive answers, some of which are presented in the following extract from the brief of Mr. Carpenter on the motions argued by him at December Term, 1866, (*Original, No.* 10:)

VIII.

The St. Paul Company also pretends that since the adjudication of this Court against its pretentions of ownership to this rolling stock, a new mortgage (which we have elsewhere, and in the proper place, shown to have been a most glaring fraud) has been discovered; which has never yet been foreclosed, and which they claim mortgaged all the rolling stock to Bronson, Soutter, and Knapp.

The answers to this are so numerous that it is difficult to select. A few may be enumerated:

(1.) The mortgage is a mere chattel mortgage, and never was filed according to the statute; and for that reason is, by the statute, declared void as against creditors and *purchasers*. The Minnesota Company is a purchaser, at the forclosure sale, under a subsequent mortgage. This chattel mortgage is therefore wholly void as to said Company.

R. S. Wis., 1858, (re-enactment,) ch. 45, sec. 3.
Cotton vs. Marsh. 3 *Wis.*, 221.

(2.) The mortgage was never renewed by affidavit, as required by statute, and expired in one year from its date, R. S. ch. 45, sec. 5.

(3.) The mortgage itself provides that the property therein conveyed should be held by Bronson, Soutter, and Knapp under their principle mortgage, and that they should sell and dispose of "the same in the same manner, at the same time, and upon the same conditions," as the other property mortgaged, *and not* otherwise.

The trustees sold the other property under the decree obtained upon that mortgage in 1863; and now to authorize them to forclose this mortgage by subsequent and independent proceedings, *would be to override the express provisions of the mortgage itself*, and give the trustees a power under the mortgage, that the mortgage *expressly* denies.

(4.) But waiving all these objections, conceding the validity of the mortgage, and the right of the trustees to foreclose it: how can the St. Paul Company claim any benefit from it? That Company is not the mortgagee, is not an assignee of the mortgage, has no rights and pretends none, except as holder of bonds secured by the mortgage. The Minnesota Company—the owner of the equity of redemption—cannot be deprived of its rights until it is foreclosed; and on the foreclosure of the mortgage, if it should ever be foreclosed, the property must be sold at public auction, and we are as likely to become the purchasers as they are. One of two things is certain; this mortgage either has or has not been foreclosed.

1. If it has been, then it is merged in the Western Division foreclosure decree; and this Court has already decided that the St. Paul Company acquired no title to this property by virtue of their purchase under that decree.

2. If it has not been foreclosed, then the St. Paul Company, which is a purchaser of only what that decree ordered to be sold, can claim no benefit under this mortgage, which was not foreclosed by that decree.

The idea that a purchaser at a sale, on the foreclosure of one mortgage, becomes thereby entitled to claim other property included in another mortgage which has not been foreclosed, rests upon no authority that I know of, except the text, "For whosoever hath, to him shall be given, and he shall have more abundance; but whosoever hath not, from

him shall be taken away even that he hath." This eccentric disposition of spiritual gifts that has troubled commentators not a little, has never been adopted into positive jurisprudence, or applied to rolling stock on a railroad.

3. If it be true, then the appellant had a mortgage which covered a part of the rolling stock of the road, distinguished only as such part as was incidental to the Western Division, and had not already been made incidental to the Eastern Division; the burthen of proof was on the appellants to show how much of the rolling stock their mortgage covered; it was a part of their case that they were bound to make out by affirmative proof.

For this purpose they took an order of reference, and in the vast mass of evidence produced on that reference they have not exhibited any testimony showing that their mortgage covered more than the forty box cars. The only oral testimony given on that point is the following: The appellant called Edwin H. Goodrich, (*Trans.*, *p.* 270,) who in his direct examination testified, *p.* 272:

"At the date of the first mortgage there was no rolling stock on hand, June 30, 1854. At the date of the mortgage to Bronson and Soutter, August 17, 1857, the cost of the rolling stock on hand was $544,492.16. At the date of the land grant mortgage, 31st of December, 1856, the rolling stock on hand cost $455,001.06. At the date of the order of reference in these causes, 11th of March, 1861, the cost of the rolling stock on hand was $623,235.78. None of the rolling stock was purchased with land grant bonds, but part of it was paid for with the proceeds of the land grant bonds. *Out of the proceeds of those bonds (issued under the mortgage to Bronson, Soutter and Knapp)* $3,000 was paid for the right use a car brake, and $31,979.64 *was paid for forty box cars.*"

Mr. Goodrich also testifies, (*p.* 179, *Transcript*):

"The *Western Divison* is charged for *the use of the rolling stock.* We charge it two cents a mile for passenger and baggage cars, one cent a mile for freight cars, and five cents a mile for locomotives, for every mile run on that division of the road, in addition to the expenses of repairs."

See accounts, (*pp.* 182, 183, *Transcript.*)

In this connection it is proper to notice that the bill states that when the land grant mortgage was executed the Western Division was not constructed, (*Transcript*, *p.* 5,) but the Eastern Division was then constructed and in operation, (*Transcript*, *p.* 3.) The Western Division was not completed till October, 1858, (*p.* 5.) Of course, therefore, all the rolling stock belonging to the company, except the forty box cars, was attached and appurtenant to the Eastern Division, and was purchased with the proceeds of the mortgages on that division.

In giving this evidence the appellants showed their approval of the natural equity suggested by the district judge, and attempted to use it to show to what extent their mortgage covers rolling stock. The appellants, putting on that ground, ought not now to be allowed to say that the evidence is insufficient, or the theory wrong; and if, as the fact is, this whole record, from beginning to end, contains no other affirmative evidence, showing that the appellant's mortgage covered more than these forty box cars, they cannot complain that no more were allowed to them, excepting upon the false notion of their Brief, that they were entitled to th whole rolling stock of the road, unless some of the owners or lien holders of a portion of the rolling stock, not parties to their action, came before the masters and showed affirmatively how much of the stock belonged to and was covered by their liens. This would be to shift the burden of proof from the appellant where it belongs upon the shoulders of those not parties litigant in this suit.

4. I have thus far considered this branch of the case as if the transcript contained all the evidence which was given before the masters, but it is apparent from the report of the masters, (*Transcript*, *pp.* 115, 118,) that they had in evidence before them the other mortgages on the Eastern Division, and took other testimony which is not on record.

The attention of the Court had early in the suit been called to the subject by the receiver. (*Transcript*, *pp.* 48, 51.)

The order of reference (*Transcript, p.* 112) required that the masters should consider the question.

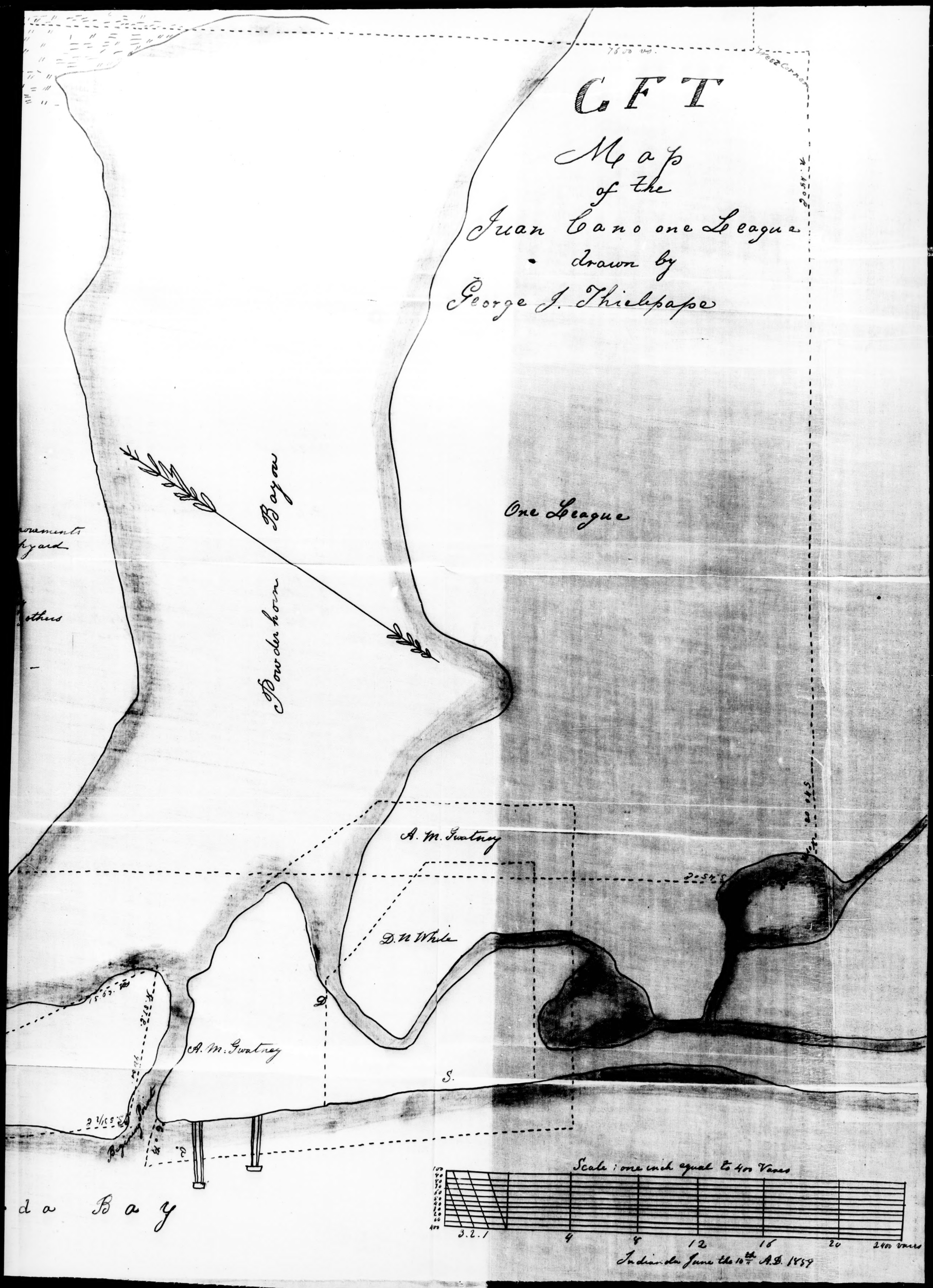
Frequent mention is made of the several mortgages on the separate divisions.

It is submitted that this Court might with equal propriety set aside the findings of a jury upon questions of fact as against the weight of evidence, where there is no bill of exceptions or case containing the whole evidence, as to reverse the report of the masters on this finding of fact upon the partial and imperfect return of the evidence before them.

FINALLY.

There must come a time in all cases when there must be an end of litigation, even in this case, and the end of litigation in it can be only reached by adhering to the principle *stare decisis.* To depart from that principle will engender a litigation not only interminable but ruinous to all parties concerned. The Court therefore should adhere as far as possible to the uniform course of decision of the district judge, and of the circuit judge, and the principles laid down in their opinions, so far as they have been recognized and adopted by the decision of this Court in this litigation. To depart from them will not only produce the injury and inconvenience already pointed out, but will present this singular and much to be avoided result: (1) The mandate of this Court in the Eastern Division suit, directing that the whole of the rolling stock, excepting forty box cars, should be delived up to the owner of the Eastern Division, on the faith of which mandate between four and five hundred thousand dollars have been paid, and (2) an utterly conflicting mandate in this case, taking away all the rolling stock from the Eastern Division, and the owners and parties interested therein, and giving it to the parties interested in the Western Division, not litigant in this appeal or bound by the decision thereof.

H. A. CRAM,
Council for Appellees.



CFT
Map
of the
Juan Cano one League
drawn by
George J. Thielepape
One League
Powderhorn Bayou
A. M. Gwatney
D. N. White
A. M. Gwatney
S.
Scale: one inch equal to 400 Vares
3.2.1
4
8
12
16
20
2400 vares
Indianola June the 10th A.D. 1859

No. 177 - page 248 - Book 20 Burnley

To Alvarado one Grant

N. 45° W.

4 Corner

No. 9673

Juan Cano

References to this map in the Testimony

A - Where Hoffman & Carline made improvements
B - " " "
C - Cowpen built by Howerton made shipyard
S - Residence of John Swartz
D - House seen by Witness Myers
M - Bend in the Bayou where Willis Sully lay
W - Wharf at Lee Salle built by Brown Segur & others under Jones.

Bayou

Bowden horn

A. M. Gwatney

Beginning Point

Matagonda Bay

Main Eng. the Survey

No. 253 Eddy vs Billings
p. 49.

Henry Stanley

Coal Burner

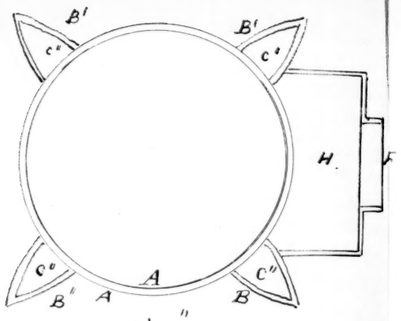


Fig. 7.

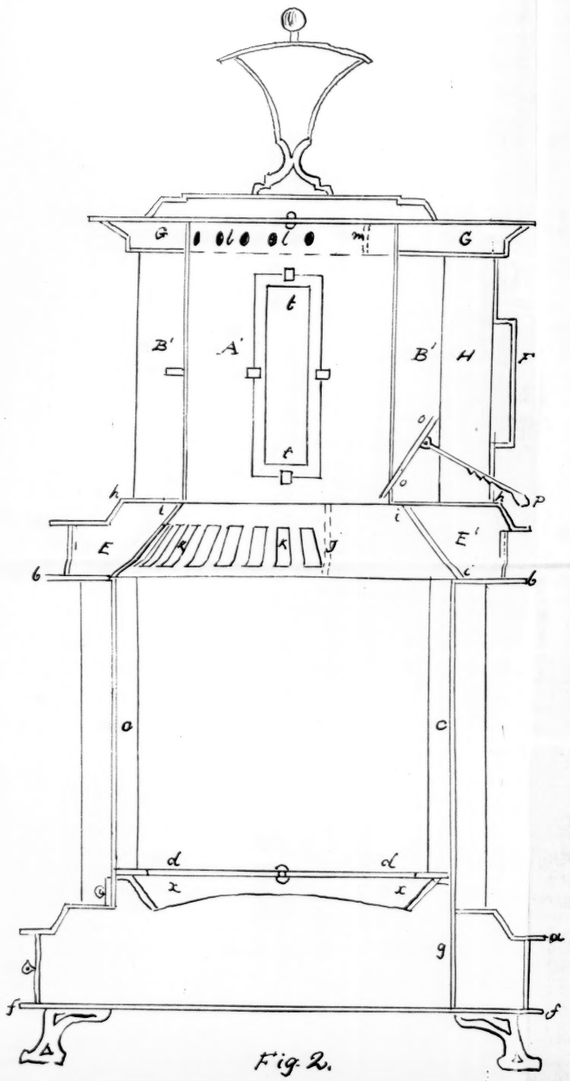


Fig. 2.

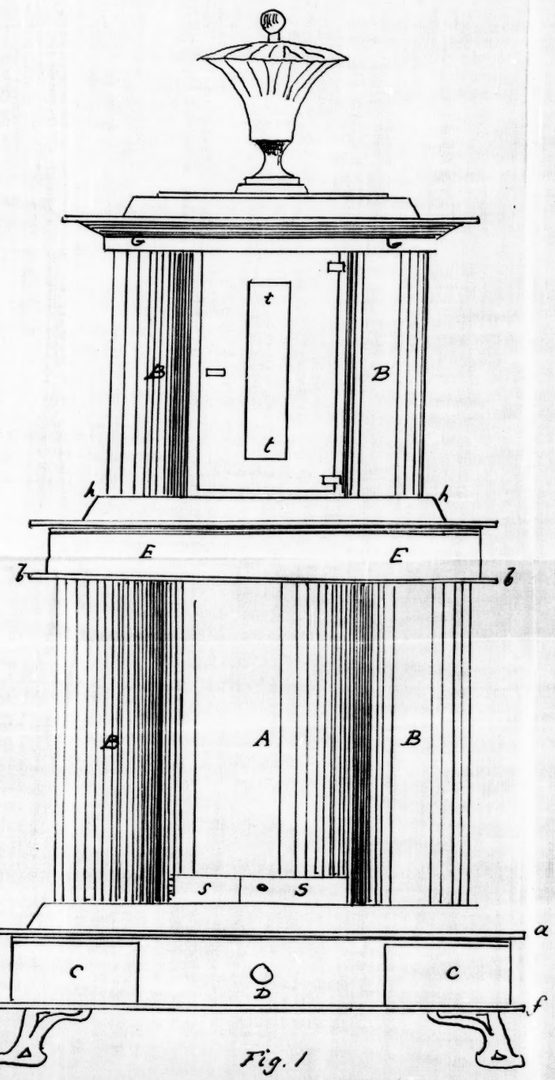
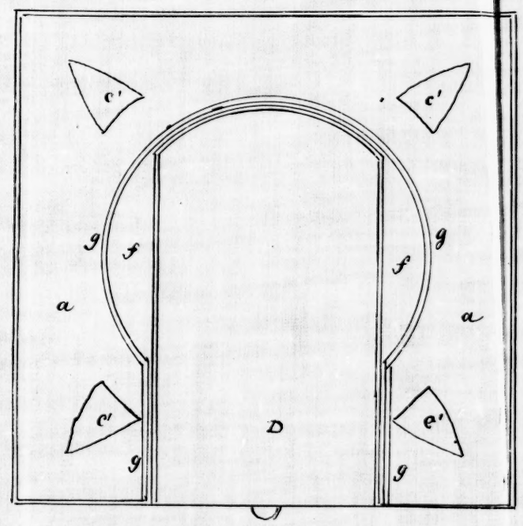


Fig. 1

Fig 5.



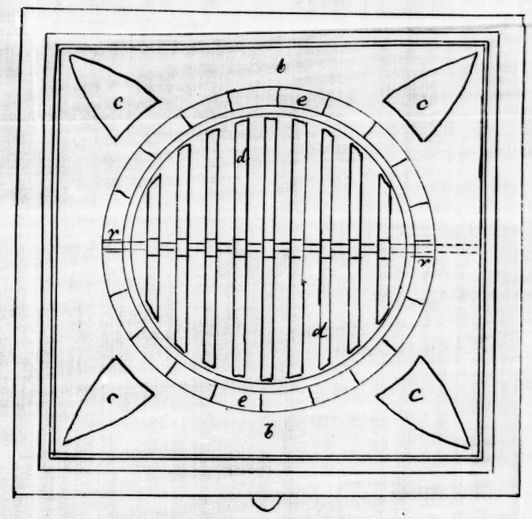


Fig. 4.

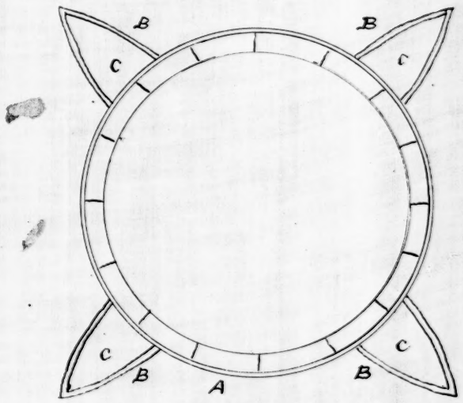


Fig. 3.

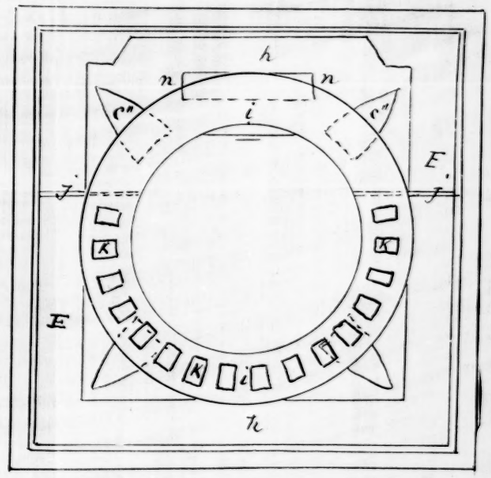


Fig. 6.

Henry Stanley- Coal Burner.

Patented Jany: 4. 1845

Reissued April, 10. 1860

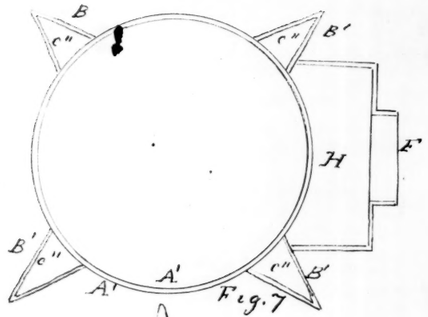


Fig: 7

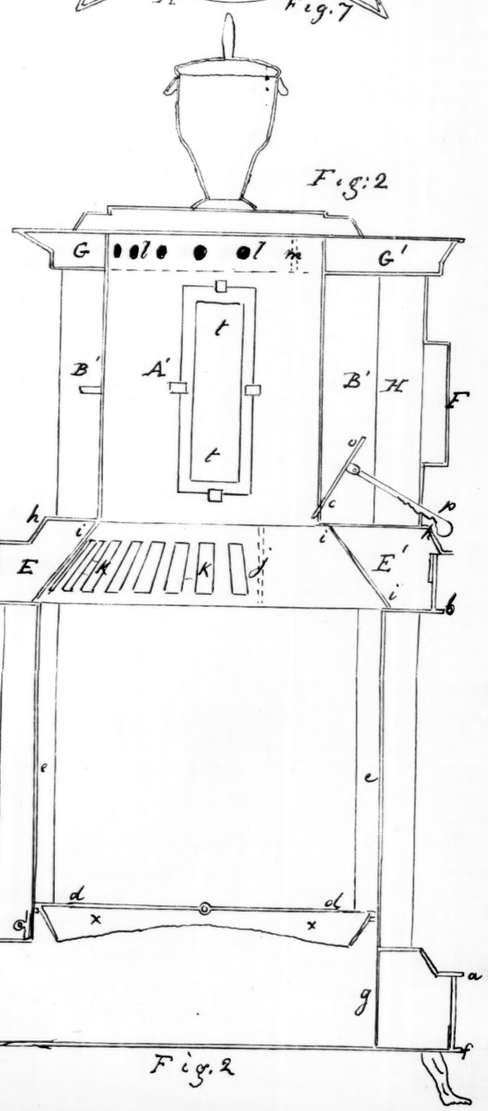


Fig: 2

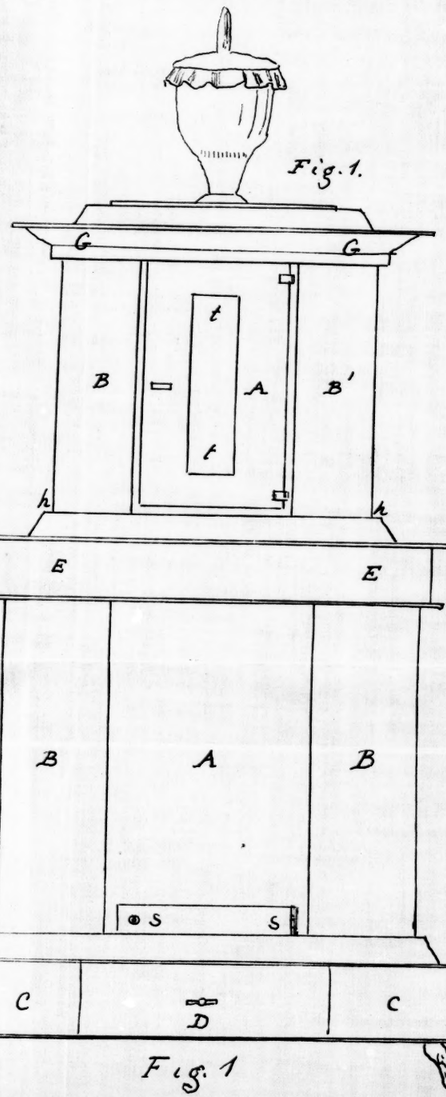


Fig: 1

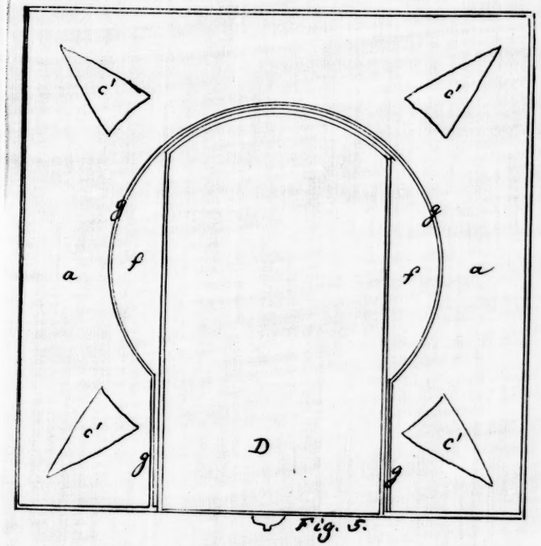


Fig: 5.

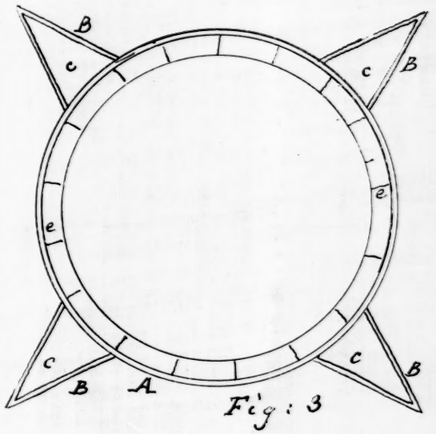


Fig: 3

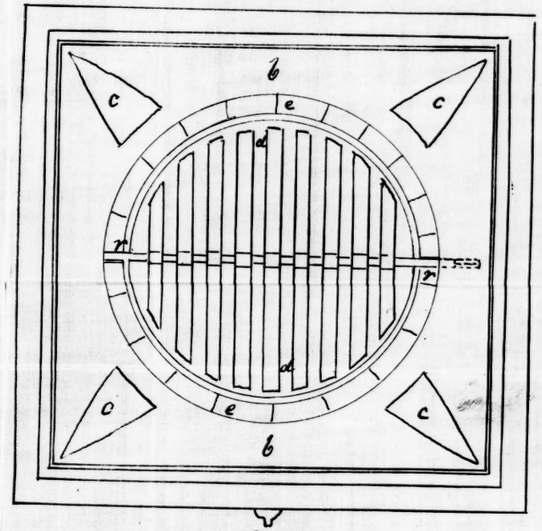


Fig: 4

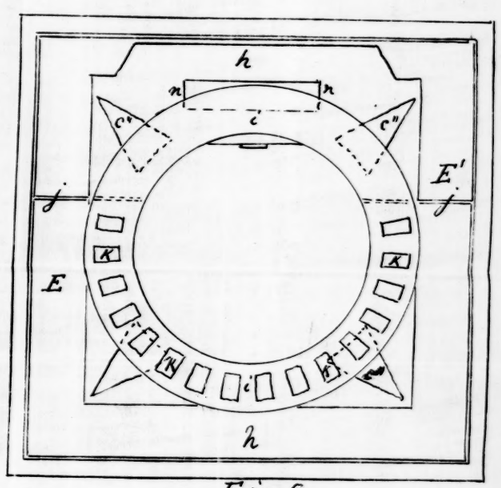


Fig: 6.

In re Abel Stearns versus United States

No. 375 Stearns v. United States
D 182 –

MISSION BUILDINGS

Dolores Street

Ruins of Old Wall

Ruins of old Wall

TANNERY

South 10 45 East 25.26 chs.

Adobe Wall

CHURCH ORCHARD GRANT

VALENCIA GRANT

Adobe wall

De Haro

Guerrero

Ridley

Curran

Hancock Street

San Miguel Rancho

San Jose Road

Guerrero Street

Railroad Restaurant

Brewing Co

Fremont

Station

CHURCH

Valencia Gate

Valencia Street

RAILROAD

Willow Hedge

ANDREAS PICO

Willow Hedge

Willow Street

Fallon Street

Corbett Street

Centre Street

Sparks Street

Eagle

WILLOWS

Hotel

Nightingale

Mission Street

North 10° 45' West 25.36 Chs

North 20. West 25.26 Chs

North 70° East 25.26 Chs

South 70° 15' West 25.26 Chs

South 78° 15' West 25.26 Chs

Variation 15° 0' West

400 Varas

600 Varas

SCALE

Feet 0 100 200 300 400 500 600 700 800 900 1000 Feet

100 Varas = 278 Feet

Surveyed by George Black C.E. April 1866

No. 325. - Map to accompany Report of the United States Land Commission in re Claim No. 292.

Dolores -- Street.

Mission Church.

Road to Mission Dolores.

Telegraph office.

64 | 520 | 64 | 520 | 64 | 520. | 80 | 64

Old Tan Yard building.

confirmed to Bishop Allemany "Orchard and Garden"

old Adobe wall

Eagle Street.

Falcon Street.

Corbett Street.

Centre Street.

Sparks Street.

580

Guerrero Street.

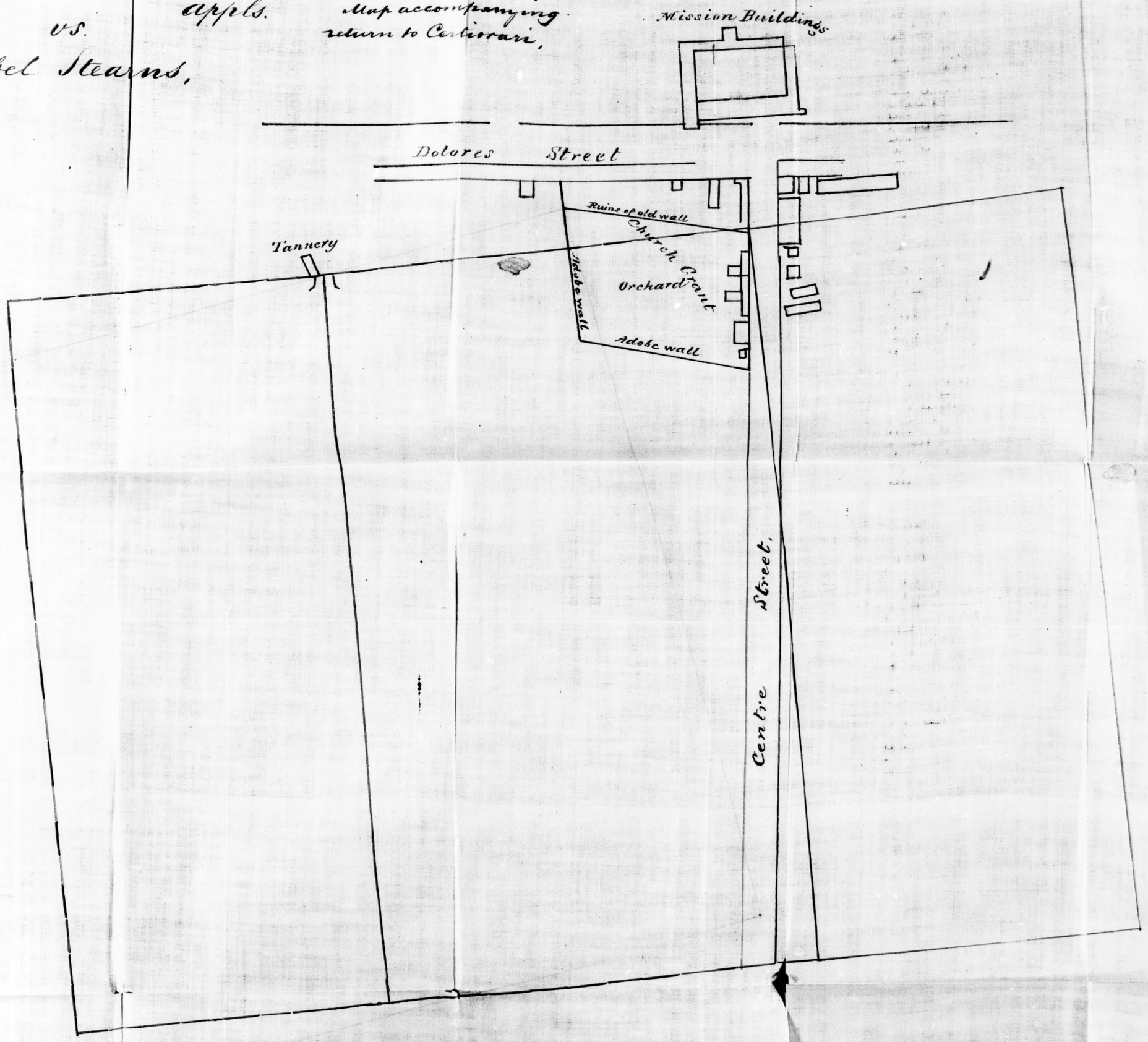
82½ | 550 | 82½

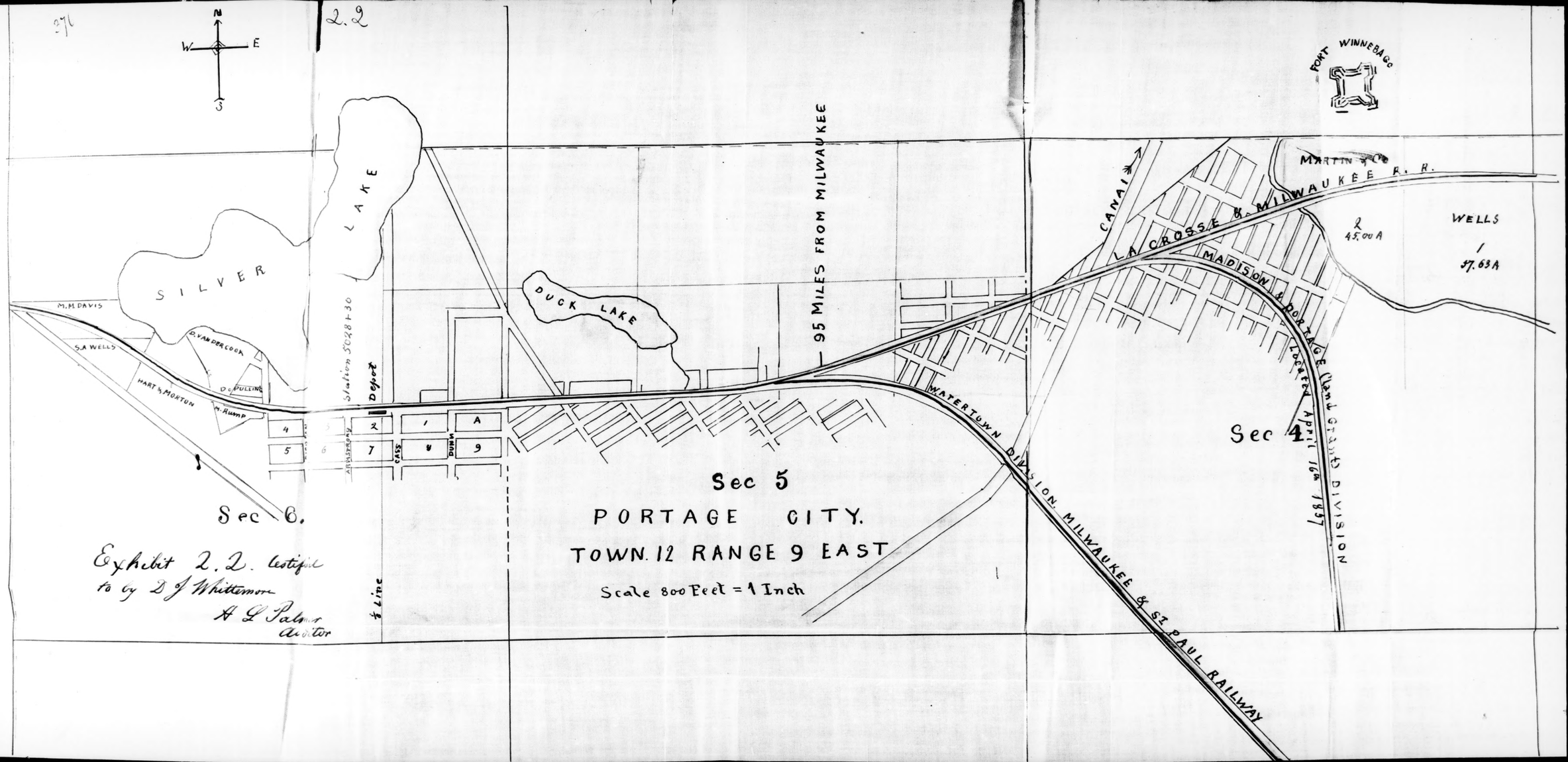
Valencia Street.

Mission Street.

No. 39. The United States appls. vs. Abel Stearns,

Map accompanying return to Certiorari,




N
W
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2.2
FORT WINNEBAGO
MARTIN & Co
MILWAUKEE R. R.
CANAL
LA CROSSE & MILWAUKEE
MADISON & PORTAGE (Land Grant) DIVISION
Located April 16th 1857
WELLS
1
37.63 A
2
45.00 A
SILVER LAKE
DUCK LAKE
95 MILES FROM MILWAUKEE
Station 5028+30
Depot
M.M. DAVIS
S.A. WELLS
D. VANDERCOOK
D.C. PULLING
HART & MORTON
M. RUMP
ADAMS
CASS
DUNN
WATERTOWN DIVISION MILWAUKEE & ST. PAUL RAILWAY
Sec 4
Sec 5
PORTAGE CITY.
TOWN. 12 RANGE 9 EAST
Scale 800 Feet = 1 Inch
Sec 6.
℄ Line
Exhibit 2.2. testified to by D J Whittemore
A L Palmer
Auditor
No 244 - Milwaukee & St Paul RR Co vs Boulter
Liber 575